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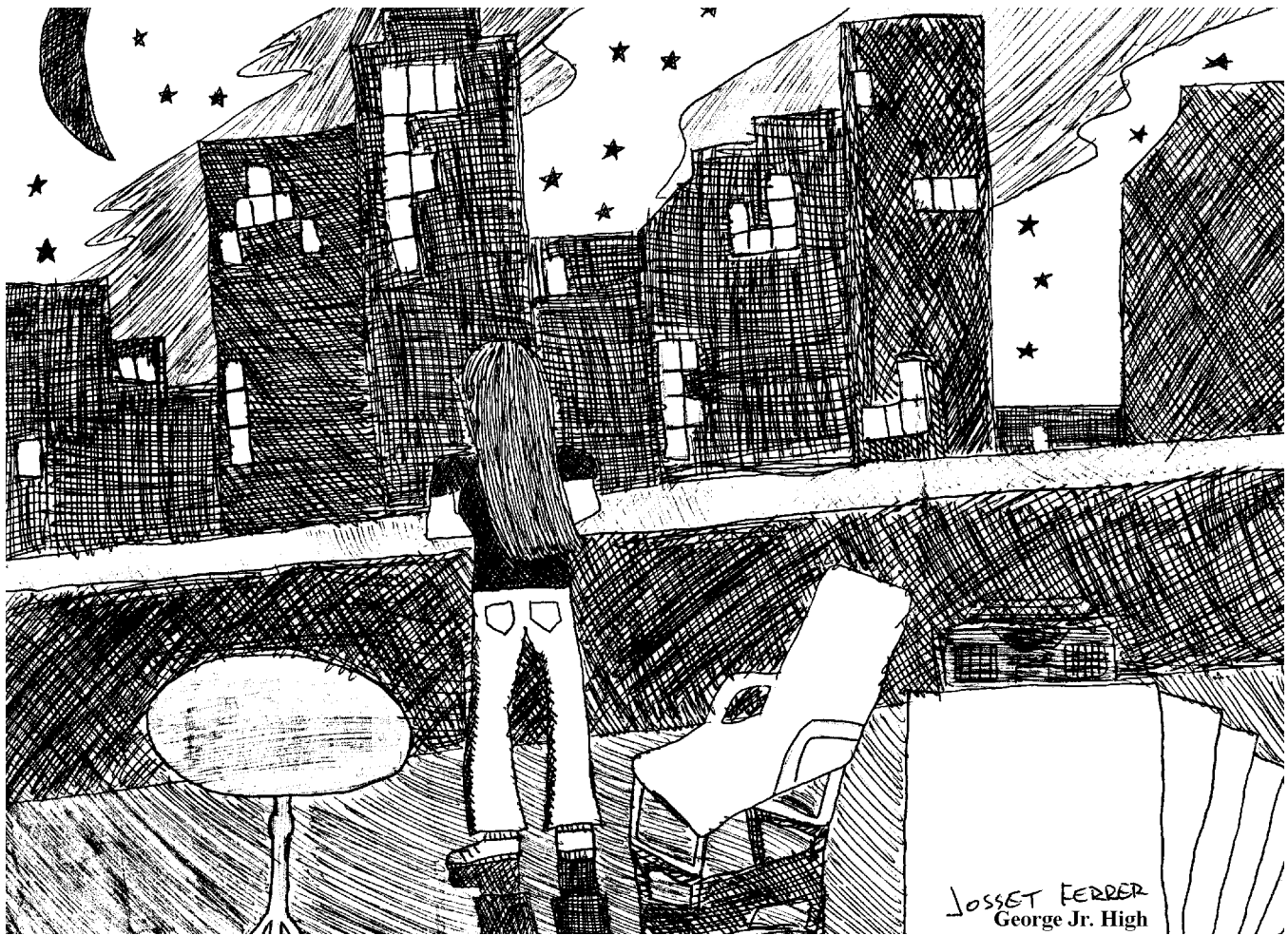
# TEXAS REGISTER

*Volume 30 Number 2*

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*Pages 59-162*

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## **OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER**

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# Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.  
<http://www.sos.state.tx.us/texreg>

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is <http://www.oag.state.tx.us>. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site.  
<http://www.state.tx.us/Government>

...

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are

requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

## Request for Opinions

### RQ-0301-GA

#### Requestor:

The Honorable Christopher G. Taylor  
Tom Green County Attorney  
Justice Center  
122 West Harris  
San Angelo, Texas 76903

Re: Authority of a commissioners court to create a collections department under the authority of the county treasurer for the purpose of collecting criminal fines and fees (Request No. 0301-GA)

#### Briefs requested by January 29, 2005

### RQ-0302-GA

#### Requestor:

The Honorable James M. Kuboviak  
Brazos County Attorney  
Brazos County Courthouse  
300 East 26th Street, Suite 325  
Bryan, Texas 77803-5327

Re: Applicability of section 145.002, Civil Practice and Remedies Code, which requires a criminal history background check for employees of an "in-home service company" and a "residential delivery company," to installations of lawn sprinkler and landscape lighting systems (Request No. 0302-GA)

#### Briefs requested by January 29, 2005

### RQ-0303-GA

#### Requestor:

The Honorable Eugene D. Taylor  
Williamson County Attorney  
405 Martin Luther King Street, Box 7  
Georgetown, Texas 78626

Re: Whether a 501(c)(3) nonprofit corporation may offer savings bonds and/or prepaid bank credit cards as prizes under the Charitable Raffle Enabling Act (Request No. 0303-GA)

#### Briefs requested by January 29, 2005

### RQ-0304-GA

#### Requestor:

The Honorable Troy Fraser  
Chair, Business and Commerce Committee  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711

Re: Conflicts of interest involving members of the board of directors of a groundwater conservation district (Request No. 0304-GA)

#### Briefs requested by January 29, 2005

### RQ-0305-GA

#### Requestor:

The Honorable John W. Smith  
Ector County District Attorney  
70th, 161st, 244th, 358th Judicial Districts  
300 North Grant, Room 305  
Odessa, Texas 79761

Re: Whether a business that holds an on-premises alcoholic beverage permit may host a poker tournament (Request No. 0305-GA)

#### Briefs requested by February 3, 2005

### RQ-0306-GA

#### Requestor:

The Honorable Mark E. Price  
San Jacinto County Criminal District Attorney  
1 State Highway 150, Room 21  
Coldspring, Texas 77331

Re: Whether a justice of the peace may establish a standing jury pool of qualified volunteers (Request No. 0306-GA)

**Briefs requested by February 3, 2005**

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200500042

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: January 5, 2005



**Opinions**

**Opinion No. GA-0288**

The Honorable Cecil L. Solomon

Franklin County Attorney

200 North Kaufman

Mount Vernon, Texas 75457

Re: Whether a sheriff in a non-bail bond board county must accept a bail bond signed by an individual surety's attorney-in-fact (RQ-0246-GA)

**S U M M A R Y**

In a county that has not established a bail bond board under chapter 1704 of the Occupations Code, the authority of an officer taking a bail bond to assess a surety's qualifications is governed by chapter 17 of the Code of Criminal Procedure. A sheriff is not required to accept a bail bond signed by an individual surety's attorney-in-fact on the surety's behalf. A sheriff's authority to require a surety to sign a bond is based on article 17.08(4) of the Code of Criminal Procedure, which establishes the requisites of a bail bond, and is not affected by the fact that the surety may have demonstrated sufficient security.

In the bail bond forfeiture context, a court may hold an individual surety liable on a bond even though the surety did not personally sign it, depending on the particular facts. However, no statute or case suggests that an officer taking a bail bond lacks authority under article 17.08(4) to require an individual surety to sign the bond or that an individual surety has the right to insist that an officer taking a bail bond permit an attorney-in-fact to sign bonds on the surety's behalf.

**Opinion No. GA-0289**

The Honorable Susan Combs

Commissioner

Texas Department of Agriculture

Post Office Box 12847

Austin, Texas 78711

Re: Whether an applicant for a commercial pesticide applicator license is required to furnish a social security number for purposes of child support enforcement (RQ-0247-GA)

**S U M M A R Y**

A commercial pesticide applicator license is an occupational license under 42 U.S.C. §666(a)(13).

The requirement in 42 U.S.C. §666(a)(13)(A) and section 231.302(c)(1) of the Texas Family Code that a license applicant provide a social security number in conjunction with a license application is neutral and uniform in its application and is a reasonable means of promoting a legitimate public interest. It does not, therefore, violate free exercise of religion guarantees in the United States and Texas Constitutions

42 U.S.C. §666(a)(13)(A) and section 231.302(c)(1) do not give the Texas Department of Agriculture (the "Department") authority to require an applicant who does not have a social security number to obtain one before making application for a license.

The Department may require an applicant to provide an unqualified affidavit swearing to the lack of a social security number. An affidavit in lieu of a social security number may also be required in connection with renewal licenses. The Department has authority to promulgate an affidavit that is not inconsistent with the statutes, cites, and legal conclusions reached in this opinion.

The Department has authority to take certain steps, such as requiring additional information from an applicant or requiring an applicant to authorize independent verification with the Social Security Administration, in order to verify the applicant's claim of having no social security number.

An applicant for a professional, driver's, occupational, or recreational license who refuses to provide a social security number or affidavit in lieu of a social security number may be denied the license. For purposes of determining what licenses a licensing authority may deny an applicant, an "occupational license" is a license, certificate, registration, permit or other form of written authorization, including a renewal of the authorization, that a person must obtain to practice or engage in a particular business, occupation or profession.

Section 231.302(c)(1) of the Texas Family Code requires licensing authorities, with respect to all licenses, to request a social security number from applicants.

Social security numbers are not required from license applicants that are artificial persons.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us). or call the Opinion Committee at (512) 463-2110.*

TRD-200500047

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: January 5, 2005



# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Advisory Opinion Request

**AOR-521.** The Texas Ethics Commission has been asked about the application of the contingent fee prohibition in section 305.022 of the Government Code to a situation in which an individual obtains an interest in a partnership as consideration, at least in part, for an agreement to communicate with a state agency in order to obtain a permit for the limited partnership. The partnership would have no value unless it obtained the permit.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15,

Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200500029

Sarah Woelk

General Counsel

Texas Ethics Commission

Filed: January 4, 2005

◆ ◆ ◆



# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 22. EXAMINING BOARDS

### PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS

#### CHAPTER 51. PRACTICE AND PROCEDURE SUBCHAPTER A. THE BOARD

##### 22 TAC §51.3

The Texas State Board of Barber Examiners proposes an amendment to §51.3 (Administrative Fines) to add fines for violations of the proposed new §51.91 that clarifies the responsibilities of barber shop and specialty shop owners and managers in regard to verifying the licenses and permits of all employees and independent contractors (booth renters) who engage in barbering in the shop. The fine for allowing an independent contractor without a license or a booth rental permit to engage in barbering in a shop would be \$500 for the first offense, \$750 for the second offense, and \$1,000 for the third and subsequent offenses. The fines for allowing an employee or independent contractor to engage in barbering with an expired license or an expired booth rental permit would be \$100 for the first offense, \$300 for the second offense, and \$500 for the third and subsequent offenses.

The action is proposed to increase compliance by licensees and permit holders with the statutes and rules under which they are regulated and help ensure that all individuals engaged in barbering in a barber shop or specialty shop have the appropriate current licenses and permits issued by the Board.

Glenn Parker, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact for local government as a result of enforcing or administering the rule. In addition, Mr. Parker has determined that for the first five year period the rule is in effect, revenue to the state will increase by approximately \$50,000 per year as a result of the increased in fines and penalties for violations of the rule.

Mr. Parker has also determined that for the first five year period the rule is in effect, the public benefit will be a decrease in the number of individuals practicing barbering without a license or permit or with an expired license or permit, an increase in compliance by barbers and other licensees with the statutes and rules under which they are regulated, and an increase in funds available within the State's General Fund due to the collection of fines and penalties for violations of the rule. There will be no costs to the general public. There will be no cost to small or micro-businesses, or individuals associated with the enforcement of the proposed rule.

Comments on the proposed amendment to the rule may be submitted in writing within 30 days after the publication of the proposal in the *Texas Register* to Glenn Parker, Executive Director, Texas State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731-4203.

The amendment is proposed under the Texas Occupations Code, Chapter 1601, §1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties, and under Texas Occupations Code, Chapter 1601, §1601.155 which provides the Board with the authority to set fees, and under Texas Occupations Code, Chapter 1601, §1601.701 which provides the Board with the authority to impose administrative penalties.

No other code, article, or statute is affected by this proposed amendment.

##### *§51.3. Administrative Fines.*

(a) (No change.)

(b) Fine Schedule:

Figure: 22 TAC §51.3(b)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2004.

TRD-200407503

Glenn D. Parker

Executive Director

Texas State Board of Barber Examiners

Earliest possible date of adoption: February 13, 2005

For further information, please call: (512) 936-6333



#### SUBCHAPTER D. BARBER SHOPS

##### 22 TAC §51.93

The Texas State Board of Barber Examiners proposes an amendment to §51.93, concerning Sanitation Rules for Barber Shops, Manicurist Specialty Shops, and Barber Schools and Colleges to require that each chair or station in a barber shop have its own jar or container of liquid sterilizer for use in sterilizing combs, brushes, clipper guards, or other appropriate implements between use.

The action is proposed to help protect the public from the potential spread of disease or other health hazards that may be spread

through the use of unsanitary or non-sterilized equipment or implements.

Glenn Parker, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact for local government as a result of enforcing or administering the rule, nor will there be an impact to state government.

Mr. Parker has also determined that for each year of the first five years the rule is to be in effect, the public benefit anticipated as a result of enforcing the rule will be an increase in the level of protection from the potential spread of disease and other health hazards for customers of barber shops. There will be no direct costs to the general public. There will be no cost to small or micro-businesses, or individuals associated with the enforcement of the proposed rule. Barbers will be required to purchase and maintain a container of liquid sterilizer at their work stations.

Comments on the proposed amendment to the rule may be submitted in writing within 30 days after the publication of the proposal in the *Texas Register* to Glenn Parker, Executive Director, Texas State Board of Barber Examiners, 5717 Balcones Drive, Suite #217, Austin, Texas 78731-4203.

The amendment is proposed under the Texas Occupations Code, Chapter 1601, §1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all rules necessary for the performance of its duties, and under Chapter 1601, §1601.152 which provides the Board with the authority to adopt reasonable rules on sanitation for the operation of barber shops, specialty shops, and barber schools.

No other code, article, or statute is affected by this proposed amendment.

§51.93. *Sanitation Rules for Barber Shops, Manicurist Specialty Shops, and Barber Schools and Colleges.*

(a) - (d) (No change.)

(e) Cleaning and Disinfecting.

(1) A container of liquid sterilizer shall be located at each barber chair or station in a shop, school, or college to be used to disinfect or sterilize combs, brushes, scissors or other equipment described in subsection (c)(1) of this section, which may be safely immersed in a liquid sterilizer. Equipment and tools to be placed in the liquid sterilizer shall first be cleaned by wiping, brushing or by running water over the implement to remove hair and other contaminants before being immersed in the liquid sterilizer. The liquid sterilizer shall be kept reasonably free of hair and other debris and shall be replaced in accordance with the manufacturer's instructions.

(2) ~~[(4)]~~ A disinfectant, germicide, or bactericide used shall be approved by the Environmental Protection Agency and used according to label instructions. When not in use, or when not in a liquid sterilizer, instruments shall ~~may~~ be placed in dry disinfectant equipment or under germicidal ultraviolet light. Metallic instruments with a cutting edge shall ~~may~~ be disinfected after proper washing by wiping carefully with a clean cotton pad saturated with a 70% ethyl alcohol solution, or clipper blades may be disinfected with spray-type disinfectants approved by the Environmental Protection Agency.

(3) ~~[(2)]~~ Whirlpool Footspas

(A) As used in this section, "whirlpool footspa" or "spa" is defined as any basin using circulating water.

(B) Before use upon each patron, each whirlpool footspa shall be cleaned and disinfected in the following manner:

(i) All water shall be drained and all debris shall be removed from the spa basin.

(ii) The spa basin must be cleaned with soap or detergent and water.

(iii) The spa basin must be disinfected with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to manufacturer's instructions.

(iv) The spa basin must be wiped clean with a dry towel.

(C) At the end of each day, each whirlpool footspa shall be cleaned and disinfected in the following manner:

(i) The screen shall be removed, all debris trapped behind the screen shall be removed, and the screen and the inlet shall be washed with soap and water or detergent and water.

(ii) Before replacing the screen, one of the following procedures shall be performed:

(I) The screen shall be washed with a chlorine bleach solution of one (1) teaspoon of 5% chlorine bleach to one (1) gallon of water, or

(II) The screen shall be totally immersed in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.

(iii) The spa system shall be flushed with low sudsing soap and warm water for at least ten (10) minutes, after which the spa shall be rinsed and drained.

(D) Every other week (bi-weekly), after cleaning and disinfecting as provided in subparagraph (C) in this paragraph, each whirlpool footspa shall be cleaned and disinfected in the following manner:

(i) The spa basin shall be filled completely with water and one (1) teaspoon of 5% bleach for each one (1) gallon of water.

(ii) The spa system shall be flushed with the bleach and water solution for 5 to 10 minutes and allowed to sit for 6 to 10 hours.

(iii) The spa system shall be drained and flushed with water before use upon a patron.

(E) A record shall be made of the date and time of each cleaning and disinfecting as required by subparagraphs (B), (C), ~~[(D)]~~ and (D) of this paragraph and indicate whether the cleaning was a daily or bi-weekly cleaning. Cleaning and disinfecting records shall be made available upon request by either a patron or a Texas State Board of Barber Examiners representative.

(F) A violation of this section may result in an administrative fine and/or disciplinary action. Each footspa not in compliance with this section may result in a separate violation.

(G) A footspa found to be in violation of the cleaning or disinfecting requirements of this rule, or a footspa for which documentation is not maintained in accordance with this rule must be removed from service and not used again until it has been cleaned and disinfected in accordance with the requirements of this rule and the records have been properly updated.

(f) - (n) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2004.

TRD-200407500

Glenn D. Parker

Executive Director

Texas State Board of Barber Examiners

Earliest possible date of adoption: February 13, 2005

For further information, please call: (512) 936-6333



## PART 5. STATE BOARD OF DENTAL EXAMINERS

### CHAPTER 102. FEES

The Texas State Board of Dental Examiners (Board) proposes the repeal of 22 TAC Chapter 102, §102.1, concerning fees charged by the Board, and proposes new §102.1 to replace it. The proposed new section contains new language to enact certain fee requirements imposed by Senate Bills 1152 and 263, §10 and §19, 78th Legislature. The new section, compared to the current iteration, also contains extensive revisions to clarify and standardize language, and to improve organization.

Section 102.1(a)(4)(A) reflects the addition of the statutorily required \$5 online fee for dental licensees, changing the annual dental registration renewal fee from \$111 to \$116.

Section 102.1(b)(4)(A) reflects the addition of the statutorily required \$3 online fee for dental licensees, changing the annual dental registration renewal fee from \$66 to \$69.

Section 102.1(c)(1) reflects the addition of fees for the new dental assistant registration program, in the amount of \$50 for the initial registration, and \$25 for the annual renewal.

Section 102.1(c)(2) reflects a proposed reduction in the fees for a pit and fissure sealant certification, in order to help offset the cost to dental assistants who wish to hold both a dental assistant registration and a pit and fissure sealant certification. The initial registration fee has been reduced from \$50 to \$25, and the annual renewal fee has been reduced from \$50 to \$15.

Section 102.1(d)(2)(B) reflects the addition of the statutorily required annual \$3.00 "e-pay" service fee for dental licensees.

There are no other substantive changes to the section.

Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

The public benefit anticipated as a result of enforcing or administering the section will be minimal.

The impact on large, small or micro-businesses will be minimal.

The anticipated economic cost to persons as a result of enforcing or administering the section will be negligible. Dental assistants who wish to be able to legally position and expose x-rays will now have to pay a fee as part of the registration requirement.

However, the Board has made an effort to keep those fees to a minimum, and has reduced other fees to try to help compensate.

Comments on the proposal may be submitted to Bobby D. Schmidt, M.Ed. Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that the proposal is published in the *Texas Register*.

### 22 TAC §102.1

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Dental Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal of §102.1 is proposed under Texas Government Code §§2001.021 et seq; Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed repeal affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

#### §102.1. Fee Schedule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 29, 2004.

TRD-200407523

Bobby D. Schmidt, M.Ed.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: February 13, 2005

For further information, please call: (512) 475-0972



### 22 TAC §102.1

The section is proposed under Texas Government Code §§2001.021 et seq.; Texas Civil Statutes; the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

#### §102.1. Fee Schedule.

##### (a) Dentists

##### (1) Application for licensure by examination:

##### (A) Initial application/examination--\$155; and

##### (B) Initial assessment by the Texas Legislature for deposit to the General Revenue Fund--\$200.

##### (2) Application for licensure by credentials--\$2,005

##### (3) Application for temporary licensure by credentials--\$500

##### (4) Annual registration renewal:

- (A) Annual registration--\$116;
- (B) Annual peer assistance--\$9; and,
- (C) Annual assessment by Texas Legislature for deposit to the General Revenue Fund--\$200.

- (5) Duplicate license--\$15
- (6) Duplicate renewal certificate--\$15
- (7) Reactivate a retired license--\$50
- (8) Sedation/Anesthesia Permit Application:
  - (A) Initial application--\$28.75.
  - (B) Annual renewal--\$5.
- (b) Dental Hygienists
  - (1) Application for licensure by examination--\$75
  - (2) Application for licensure by credentials--\$480
  - (3) Application for temporary licensure by credentials--\$100
  - (4) Annual registration renewal:
    - (A) Annual registration--\$69; and,
    - (B) Annual peer assistance--\$2.
  - (5) Duplicate license--\$15
  - (6) Duplicate renewal certificate--\$15
  - (7) Reactivate a retired license--\$50
- (c) Dental Assistants
  - (1) Dental assistant registration:
    - (A) Initial application--\$50.
    - (B) Annual renewal--\$25.
  - (2) Pit and fissure sealant certification:
    - (A) Initial application--\$25.
    - (B) Annual renewal--\$15.
- (d) Dental Laboratories
  - (1) Initial application--\$105
  - (2) Annual registration renewal:
    - (A) Annual registration--\$101; and,
    - (B) Annual e-pay service fee--\$3.
- (e) Mobile Dental Facilities or Portable Dental Units
  - (1) Initial application--\$50
  - (2) Annual renewal--\$50
- (f) Application for dental intern or resident exception tracking (identification) number--\$25
- (g) Dentist or dental hygienist faculty application--\$75

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 29, 2004.

TRD-200407524  
 Bobby D. Schmidt, M.Ed.  
 Executive Director  
 State Board of Dental Examiners  
 Earliest possible date of adoption: February 13, 2005  
 For further information, please call: (512) 475-0972



## PART 10. TEXAS FUNERAL SERVICE COMMISSION

### CHAPTER 206. GUARANTEED STUDENT LOANS

#### 22 TAC §206.1

The Texas Funeral Service Commission (commission) proposes new §206.1, concerning Default and Repayment Agreements.

The new section is proposed to comply with the requirements of Education Code, §57.491 which directs all regulatory agencies to adopt rules on this subject.

The new section describes instances when the commission will and will not issue new licenses or renew outstanding licenses when a licensee or applicant is in default on a guaranteed student loan or a repayment agreement.

O.C. "Chet" Robbins, Executive Director has determined that for the first five-year period the new section is in effect, there will be no fiscal implication for the state or local governments as a result of enforcing or administering the proposed section.

Mr. Robbins has also determined that for each year of the first five-year period the new section is in effect, the public benefit anticipated as a result of enforcing the section will be minimal. There will be no effect on large, small or micro-businesses. The anticipated economic costs to persons who are required to comply with this section will be no more nor less than the costs to the individuals before this new section becomes effective and there is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robins@tfsc.state.tx.us.

The new section is proposed under the authority of the Texas Occupations Code, §651.152 which authorizes the commission to issue such rules and regulations as may be necessary to administer Chapter 651. The new section is also adopted under Education Code, §57.491 which directs all regulatory agencies to adopt rules on this subject.

No other statutes, articles, or codes are affected by the new section.

#### §206.1. Default and Repayment Agreements.

Applicability of Education Code. All individual license renewals are subject Texas Education Code, §57.491 relating to defaults on guaranteed student loans and repayment agreements.

- (1) The commission may issue an initial license to a person who is in default on a guaranteed student loan but shall not renew the license, unless the applicant furnishes a certification from the Texas Guaranteed Student Loan Corporation that the licensee has entered into

a repayment plan on the loan or that the licensee is no longer in default on the loan.

(2) The commission shall not renew the license of a person who is in default on a guaranteed student loan, unless the renewal is the first renewal following the commission's receipt of notice of the licensee's default or the licensee has furnished the certification described in paragraph (1) of this section.

(3) The commission shall not renew the license of a person who defaults on a repayment agreement on a defaulted loan, unless the commission receives a certification that the licensee has entered into another repayment agreement or that the licensee is no longer in default.

(4) The commission shall give the licensee an opportunity for hearing before taking action concerning the non-renewal of a license for default on a guaranteed student loan or a repayment agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 31, 2004.

TRD-200407531

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: February 13, 2005

For further information, please call: (512) 936-2466



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 7. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES**

#### **CHAPTER 189. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES**

##### **40 TAC §189.7**

The Texas Council on Purchasing from People with Disabilities proposes an amendment to §189.7, concerning contracting with Central Non-profit Agencies. The section details the requirements for contracting with a Central Nonprofit Agency. The amendment provides formal procedures for determining the management fee rate process charged by the Central Non-profit Agency.

Ms. Margaret Pfluger, Chairperson, of the Texas Council on Purchasing from People with Disabilities, has determined for the first five-year period the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Ms. Pfluger, also has determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be a clearer understanding of the program provided by the Texas Council on Purchasing

from People with Disabilities and the creation of more efficient rules. There will be no effect on large, small or micro-businesses. There are no anticipated economic costs to persons who are required to comply with the rule and there is no impact on local employment.

Comments on the proposal may be submitted to Kelvin Moore, Program Administrator, Texas Council on Purchasing from People with Disabilities, P.O. Box 13047, Austin, TX 78711-3047. Comments may also be submitted electronically to [kelvin.moore@tbpc.state.tx.us](mailto:kelvin.moore@tbpc.state.tx.us) or faxed to (512) 463-3244. Comments must be received no later than thirty days from the date of publication of the proposal to the *Texas Register*.

The amendment is proposed under the authority of the Texas Human Resource Code, Title 8, Chapter 122, §122.003 and §122.013.

The following code is affected by this amendment: §122.019

*§189.7. Contracting with Central Non-profit Agencies.*

(a) - (b) (No change.)

(c) The council shall annually review the management fee and shall publish in the *Texas Register* a request for comment on the proposed management fee not later than the 60th day before the review. The council shall give reasonable notice of the intended management fee review to each CRP. In the event of a proposed management fee rate change the council shall require the CNA to provide documentation in support of any such change. Any supporting documentation of the CNA's proposed rate shall be made available to the public upon request. The council, at its sole discretion, may negotiate and approve varying management fees for a CNA to provide a fee structure that corresponds to the level of service being given by a CNA to each of the CRPs.

(d) (No change.)

(e) In accordance with the Texas Human Resources Code, §122.019(c) [(d)], the council shall annually [; at least once during the contract period; but more often if the council deems necessary;] review services by and the performance of a CNA, and the revenue required to accomplish the program. The purpose of the review shall be to determine whether a CNA has complied with statutory requirements, contract requirements, and performance standards set forth in §189.12 of this title (relating to performance standards for a central nonprofit agency). [ Following the review of a CNA as required by §122.019(d) of the Human Resources Code, the council at its sole discretion, may approve the performance of the central nonprofit agency and the continuation of the contract through its termination date; or ]

(f) Following the review of a CNA as required by §122.019(d) of the Human Resources Code, the council at its sole discretion, may approve the performance of the central nonprofit agency and the continuation of the contract through its termination date. The council may issue a request for proposals or negotiate an emergency contract not to exceed one year, when a contract with a CNA is terminated by the council because:

(1) - (4) (No change.)

(g) - (r) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2004.

TRD-200407504

Margaret Pfluger

Chairman

Texas Council on Purchasing from People with Disabilities

Earliest possible date of adoption: February 13, 2005

For further information, please call: (512) 463-3244



# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 102. FEES

##### 22 TAC §102.1

The State Board of Dental Examiners has withdrawn from consideration the proposed repeal of §102.1 which appeared in the September 24, 2004, issue of the *Texas Register* (29 TexReg 9159).

Filed with the Office of the Secretary of State on December 29, 2004.

TRD-200407521

Bobby D. Schmidt, M.Ed.

Executive Director

State Board of Dental Examiners

Effective date: December 29, 2004

For further information, please call: (512) 475-0972



##### 22 TAC §102.1

The State Board of Dental Examiners has withdrawn from consideration the proposed new §102.1 which appeared in the September 24, 2004, issue of the *Texas Register* (29 TexReg 9160).

Filed with the Office of the Secretary of State on December 29, 2004.

TRD-200407522

Bobby D. Schmidt, M.Ed.

Executive Director

State Board of Dental Examiners

Effective date: December 29, 2004

For further information, please call: (512) 475-0972



### PART 10. TEXAS FUNERAL SERVICE COMMISSION

#### CHAPTER 206. GUARANTEED STUDENT LOANS

##### 22 TAC §206.1

The Texas Funeral Service Commission has withdrawn from consideration the proposed new to §206.1 which appeared in the June 25, 2004, issue of the *Texas Register* (29 TexReg 6027).

Filed with the Office of the Secretary of State on December 30, 2004.

TRD-200407530

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Effective date: December 30, 2004

For further information, please call: (512) 936-2466



## TITLE 34. PUBLIC FINANCE

### PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

#### CHAPTER 301. RULES OF THE TEXAS STATEWIDE EMERGENCY SERVICES RETIREMENT FUND

##### 34 TAC §301.3

The Office of the Fire Fighters' Pension Commissioner has withdrawn from consideration the proposed amendments to §301.3 which appeared in the June 25, 2004, issue of the *Texas Register* (29 TexReg 6080).

Filed with the Office of the Secretary of State on December 29, 2004.

TRD-200407520

Melissa Juarez

Legal Counsel

Office of the Fire Fighters' Pension Commissioner

Effective date: December 29, 2004

For further information, please call: (512) 936-3372



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 22. EXAMINING BOARDS

### PART 10. TEXAS FUNERAL SERVICE COMMISSION

#### CHAPTER 205. CEMETERIES AND CREMATORIES

##### 22 TAC §205.6

The Texas Funeral Service Commission (commission) adopts new §205.6, concerning Contracts for Direct Cremation Services without changes to the text as published in the October 8, 2004, issue of the *Texas Register* (29 TexReg 9492). The text of the rule will not be republished.

The new section reflects the holding of Attorney General Opinion GA-0218 (2004) that an authorizing agent may contract directly for cremation services if the crematory is also licensed as a funeral establishment or if the authorizing agent receives written authorization from either a justice of the peace or medical examiner.

No comments were received regarding adoption of the new section.

The new section is adopted under the authority of the Texas Occupations Code, §651.152 which authorizes the commission to issue such rules and regulations as may be necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the new section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 31, 2004.

TRD-200407532

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Effective date: January 20, 2005

Proposal publication date: October 8, 2004

For further information, please call: (512) 936-2466



#### CHAPTER 209. ETHICAL STANDARDS FOR PERSONS LICENSED BY THE COMMISSION

##### 22 TAC §209.1

The Texas Funeral Service Commission (commission) adopts new §209.1, concerning Ethical Standards without changes to the text as published in October 8, 2004, issue of the *Texas Register* (29 TexReg 9492). The text of the rule will not be republished.

The new section is adopted to comply with the requirements of Section Six of House Bill 1538, 78th Legislature (Regular Session) which directs the commission to adopt ethics standards for licensees.

The new section establishes competency and integrity goals. The new section also requires and prohibits specific conduct in which licensees shall or shall not engage when carrying out their professional duties.

No comments were received regarding adoption of the new section.

The new section is adopted under the authority of the Texas Occupations Code, §651.152 which authorizes the commission to issue such rules and regulations as may be necessary to administer Chapter 651. The new section is also adopted under Occupations Code, §651.151. The commission interprets this section to require the commission to adopt ethics standards.

No other statutes, articles, or codes are affected by the new section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 31, 2004.

TRD-200407533

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Effective date: January 20, 2005

Proposal publication date: October 8, 2004

For further information, please call: (512) 936-2466



## TITLE 25. HEALTH SERVICES

### PART 4. ANATOMICAL BOARD OF THE STATE OF TEXAS

#### CHAPTER 477. DISTRIBUTION OF BODIES

##### 25 TAC §477.4, §477.5



The Anatomical Board of the State of Texas (board), acting through its Executive Committee, adopts amendments to Title 25, Texas Administrative Code, §477.4 (relating to Transport, Importation and Exportation of Bodies) and §477.5 (relating to Transfer of Bodies). Notice of the proposed amendments was published in the July 16, 2004, issue of the *Texas Register* (29 TexReg 6878). The amended sections are adopted without changes to the proposed text and will not be republished.

The amendment to §477.4(a) makes clear that the transfer and transport of bodies from one institution to another, or for export from the state, is to be done by a licensed funeral establishment, ambulance service, member institution, or public carrier.

Section 477.5(d) presently requires board approval in advance for the disposal of transferred bodies that are not being returned to the institution that originally provided the body for final disposition. The need to consider these requests occurs too frequently to continue this practice. Accordingly, the amendment grants authority to both the secretary-treasurer and the board to approve other arrangements for the disposal of transferred bodies.

The Board received no comments regarding the amendments.

The amended sections are adopted under Health and Safety Code §691.007 which authorizes the Board to promulgate rules for its administration. The amended sections are also adopted under Health and Safety Code §691.022(b). The board interprets this section as requiring it to adopt rules to ensure that bodies are treated with respect.

No other statutes, articles, or codes are affected by the amended sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 28, 2004.

TRD-200407510

Cue D. Boykin

Assistant Attorney General

Anatomical Board of the State of Texas

Effective date: January 17, 2005

Proposal publication date: July 16, 2004

For further information, please call: (512) 475-4239



## **TITLE 28. INSURANCE**

### **PART 1. TEXAS DEPARTMENT OF INSURANCE**

#### **CHAPTER 5. PROPERTY AND CASUALTY INSURANCE**

##### **SUBCHAPTER C. TEXAS MEDICAL LIABILITY INSURANCE UNDERWRITING ASSOCIATION**

###### **28 TAC §§5.2001 - 5.2006**

The Commissioner of Insurance adopts amendments to §§5.2001 - 5.2006 concerning the plan of operation of the Texas

Medical Liability Insurance Underwriting Association (JUA). The amended sections are adopted without changes to §§5.2001 - 5.2003 and 5.2005 - 5.2006 and with one nonsubstantive typographical correction to §5.2004 as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10175).

The amendments are necessary to conform to and implement amendments to Insurance Code Article 21.49-3 enacted by the 77th Legislature in Senate Bill 1839 and the 78th Legislature in Senate Bills 14, 421, 339, and 891. Further, the amendments update, streamline, and clarify various terms and provisions and conform the plan of operation to the federal Servicemembers Civil Relief Act of 2003 (50 U.S.C. App. §§501, et seq.).

Senate Bill 1839, enacted by the 77th Legislature, among other matters, establishes eligibility requirements for the addition of for-profit nursing homes; adds language relating to a deficit sustained by the JUA; establishes separate stabilization reserve funds with respect to physicians, health care providers, other than nursing homes, and to nursing homes; and requires each policyholder to have contingent liability for a proportionate share of any assessment of policyholders as specified within the applicable group of providers.

Senate Bills 14, 339, 421 and 891, enacted by the 78th Legislature, among other matters, address participation by JUA members, procedures, policyholder stabilization reserve funds, eligibility of other health care practitioners and facilities, and assisted living facilities, and issuance of general liability coverage in connection with medical liability insurance coverage. Senate Bill 14 amends Article 21.49-3 to provide that assessments and contributions paid to the association by JUA members shall be reimbursed to the state to the extent that members have recouped their assessments using premium tax credits. Senate Bill 339 amends Article 21.49-3 to allow the JUA to offer installment payment plans for coverage and to permit payment of the stabilization reserve fund charge on an installment basis or as an annual lump sum if required by the JUA. Senate Bill 421 amends Article 21.49-3 to add "assisted living facility" to the definition of "health care provider"; establish assisted living facilities as eligible for JUA coverage subject to the same provisions of Article 21.49-3 as nursing homes; add definitions of "health care," "health care facility," and "health care practitioner"; and establish health care practitioners and facilities as eligible for JUA coverage subject to specific procedures, including a determination and order by the commissioner. Senate Bill 891 amends Article 21.49-3 to allow the JUA to provide general liability insurance coverage to be issued in connection with medical liability insurance issued by the JUA.

The Servicemembers Civil Relief Act, signed into federal law on December 19, 2003 as Public Law 108-189, amended the Soldiers' and Sailors' Civil Relief Act (50 U.S.C. App. §§501, et seq.). This Act, under 50 U.S.C. app. §593, requires an insurance carrier to suspend professional liability insurance coverage provided to a servicemember described under the Act upon receiving a written request from the servicemember.

Overall, amendments to §§5.2001 - 5.2006 eliminate unnecessary language, including requirements that are detailed in the statute and not necessary to repeat in the rule, and update, clarify, and streamline various terms and provisions. Throughout the amendments, references to the commissioner or the department, as applicable, replace references to the State Board of Insurance. In several instances, citations to recodified statutes replace old statutory references.

Amendments to §5.2001 add definitions of "association," "commissioner," and "department;" delete the definition of "board," and amend the definition of "application" by including general liability insurance issued in connection with medical liability insurance.

Amendments to subsection (c) of §5.2002, change notice provisions to conform with open meeting requirements under the Government Code, Chapter 551. Amendments to subsection (d) clarify that directors of the JUA take office on October 1 of each year and shall hold office until the next election of directors or until a successor has been selected and qualified. In addition, amendments to subsection (d)(2) combine representation of the elected directors from the National Association of Independent Insurers (NAII) and the Alliance of American Insurers (AAI) to provide for a single representative from either the NAII or the AAI, at the choice of the Property Casualty Insurers Association of America (PCI). This amendment was made in recognition of the merger between NAII and AAI forming PCI. Further, amendments to subsection (d)(2) substitute the Insurance Council of Texas for the directorship previously held solely by a member of the AAI.

Amendments to subsection (c) of §5.2003 add references to eligibility of coverage for health care practitioners and facilities not otherwise defined as health care providers and provisions for two separate policyholder's stabilization reserve funds, one for physicians and certain health care providers under §4A of Article 21.49-3, and one for nursing homes and assisted living facilities under §4B of Article 21.49-3. Amendments to subsection (d) add references to nursing homes and assisted living facilities as appropriate and provide that the JUA shall reimburse the state to the extent that the members have recouped their assessments using premium tax credits pursuant to subsection (e), with interest at a rate to be approved by the commissioner.

Amendments to subsection (a) of §5.2004 provide that: the procedures regarding rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to insurance written by the association and related statistics shall be in accord with §4 of Article 21.49-3; policies issued by the JUA shall be written for a term of one year or less, as determined by the JUA; the JUA may offer an installment plan for coverage or for payment of the stabilization reserve fund charge; the JUA may require the policyholder to pay the stabilization reserve fund charge as an annual lump sum; and general liability limits must be the same as medical liability limits subject to the JUA's maximum policy limits. In addition, amendments to subsection (a) add references to general liability insurance and excess general liability insurance, health care practitioners, and health care facilities, and clarify that policies of excess medical liability and excess general liability insurance terminate automatically in the event that the underlying primary policy of medical liability or underlying primary general liability insurance is not maintained.

Amendments to subsection (b) of §5.2004 add references to health care practitioners and health care facilities; provide that a nursing home or assisted living facility not otherwise eligible for coverage is eligible for coverage if the nursing home or assisted living facility, in accordance with JUA requirements, made a verifiable effort to obtain coverage from authorized insurers and eligible surplus lines insurers, as evidenced by two rejections, and was unable to obtain substantially equivalent coverage and rates; provide that the JUA may issue a general liability insurance policy only if the applicant is issued a medical liability insurance policy by the JUA; include a self-insurance trust created under

Article 21.49-4 as an authorized insurer for purposes of evidence of a rejection for medical liability coverage; require all nursing home and assisted living facility applicants to provide evidence of inability to obtain coverage from authorized insurers and eligible surplus lines insurers for substantially equivalent coverage and rates; add physicians and other health care providers to those applicants and policyholders required to comply with all significant loss control or risk management recommendations; provide that noncompliance with reasonable loss control or risk management recommendations may be a reason for cancellation of a JUA policy; provide that a policy of general liability insurance issued by the JUA shall automatically terminate on the same effective date and time as the termination of the medical liability policy; provide that the JUA shall suspend a policy, upon written request from a policyholder subject to the Servicemembers Civil Relief Act of 2003 (50 U.S.C. §§501, et seq.); and add a self-insurance trust, established under Article 21.49-4, as an entity that may write a JUA risk as regular business upon the insured's written consent filed with the JUA, in which event the JUA shall cancel its policy pro rata.

The amendment to paragraph (1) of §5.2006 provides that general liability insurance, in addition to medical liability insurance, is a coverage for which the JUA may develop a reinsurance program.

No comments were received.

The amendments are adopted under the Insurance Code Article 21.49-3, §31.007 and §36.001. Article 21.49-3, §3(c) specifies that amendments to the plan of operation shall be made by the directors of the association, subject to the approval of the commissioner, or at the direction of the commissioner. Pursuant to §31.007, a reference in the Insurance Code or other law to the State Board of Insurance, the Board of Insurance Commissioners, or an individual commissioner means the commissioner or the department as consistent with the respective duties of the commissioner and the department under this code and other insurance laws. Among other things, Article 21.49-3, §3(c) specifies that the plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medical liability insurance, and shall contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the JUA, assessment of members and assessment of policyholders to defray losses and expenses, administration of the policyholder's stabilization reserve fund, commission arrangements, reasonable and objective underwriting standards, acceptance, assumption, and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the JUA. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

*§5.2004. Medical Liability Insurance and General Liability Insurance.*

(a) The policy.

(1) Approval. The procedures regarding rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to insurance written by the association and statistics relating thereto shall be in accord with the Act, §4.

(2) Duration of policies. All policies issued by the association shall be written for a term of one year or less, as determined by the association, to commence at 12:01 a.m. on their respective effective dates. No policies may be issued by the association with an effective date after the date fixed in the Act for a plan of suspension to become effective and operative. All policies shall be written upon forms approved by the department, and shall contain a provision which requires, as a condition precedent to settlement or compromise of any claim, the consent or acquiescence of the insured. If, however, the insured refuses to consent to any settlement recommended in writing by the association and elects to contest or continue any legal proceedings, the liability of the association shall not exceed the amount for which the claim could have been settled plus the cost and expenses incurred up to the date of such refusal.

(3) Installment payment plan. The association may offer an installment plan for coverage obtained through the association or for payment of the stabilization reserve fund charge. The association may require the policyholder to pay the stabilization reserve fund charge as an annual lump sum.

(4) Limits of liability.

(A) No individual or organization may be insured by a policy issued, or caused to be issued, by the association for an amount exceeding a total of \$1 million per occurrence (for all coverages combined) and \$3 million aggregate per annum (for all coverages combined). As used in this paragraph, the terms "individual" and "organization" mean each physician, health care provider, health care practitioner, and health care facility holding a separate license or accreditation from the appropriate licensing or accrediting agency as applicable.

(B) If provided, general liability limits must be the same as medical liability limits subject to the maximum policy limits specified in subparagraph (A) of this paragraph.

(5) Special provisions.

(A) Policies with deductibles may be issued by the association.

(B) Policies subject to retrospective rating plans may be issued by the association.

(C) Policies of excess medical liability insurance and excess general liability insurance written by the association shall:

(i) be on a following form basis to the underlying medical liability insurance or underlying general liability insurance coverage over which it is written;

(ii) be issued subject to review of the underlying coverage if review is deemed necessary by the association or its representatives;

(iii) not be issued in those cases where the net retention at risk by the primary carrier is less than \$100,000 per occurrence or less than \$300,000 aggregate per annum after the application of any applicable deductible;

(iv) be issued only when the underlying insurance coverage is underwritten by a member of the association and such underlying insurance coverage does not have a deductible in excess of \$25,000; and

(v) terminate automatically in the event the underlying primary policy of medical liability insurance or underlying primary general liability insurance is not maintained for any reason, except exhaustion by payment of a loss or losses. If the aggregate underlying primary medical liability insurance or general liability insurance is exhausted by the payment of a loss or losses occurring during the policy

period, the insurance provided by the excess policy shall apply in the same manner as if the underlying primary insurance was in full force and effect;

(vi) not be accepted for a hospital or other institutional health care provider or health care facility if the applicant does not provide evidence that all physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners with staff privileges are insured for their individual medical liability with limits of liability of at least \$100,000 per occurrence and \$300,000 aggregate per annum; and

(vii) not be accepted for physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners who employ or contract with other physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners if the applicant does not provide evidence that all employed physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners who are eligible to obtain coverage from the association are insured for their individual medical liability with limits of liability of at least \$100,000 per occurrence and \$300,000 aggregate per annum.

(D) No hospital or other institutional health care provider, health care facility or physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners that have employed or contracted physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners can be accepted for coverage in the association without evidence that all physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners with staff privileges or employed or contracted by the applicant are insured for their individual medical liability with limits of at least \$100,000 per occurrence and \$300,000 aggregate per annum.

(E) For purposes of this section, the term health care providers or health care practitioners shall not include personnel at or below the level of employed registered nurse. Insurance required for physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, health care practitioners or other health care providers with hospital staff privileges or employed or contracted by the applicant shall be limited to any one of the following entities:

(i) an insurance company authorized and licensed to write and writing health care liability or medical liability insurance in Texas, pursuant to the authority of the Insurance Code, Chapter 801;

(ii) an insurance company eligible to write and writing health care liability or medical liability insurance in Texas as a surplus lines carrier, pursuant to the authority of the Insurance Code, Chapter 981;

(iii) the Texas Medical Liability Insurance Underwriting Association, established under the Insurance Code Article 21.49-3;

(iv) a self-insurance trust created to provide health care liability or medical liability insurance, established under the Insurance Code Article 21.49-4;

(v) a risk retention group or purchasing group writing health care liability or medical liability insurance in Texas registered, pursuant to the authority of the Insurance Code Article 21.54;

(vi) a plan of self-insurance of an institution of higher education that provides health care liability or medical liability coverage, established under the Education Code, Chapter 59; or

(vii) a plan of self-insurance that meets each of the following criteria:

(I) the plan's liabilities must be fully funded and the plan must be solvent. The plan must have a minimum net worth equal to the lesser of \$1 million or that amount of net worth that results in a capitalization ratio of 5.0%. As used in this subclause, "net worth" shall be calculated by determining the excess, if any, of the plan's total assets over the plan's total liabilities. As used in this subclause, "capitalization ratio" means the ratio of the plan's net worth (as the numerator) to the plan's total assets (as the denominator). Notwithstanding the preceding, the net worth requirements contained in this subclause do not apply to a plan that lawfully has taxing authority over a segment of the Texas public provided that the taxing authority may be utilized to meet the plan's liabilities and other obligations; and

(II) the plan must annually obtain an actuarial analysis which reflects that its operations are viable from a qualified actuary who is a member in good standing of the American Academy of Actuaries. Notwithstanding the preceding, an actuarial opinion filed with the Texas Department of Insurance pursuant to Texas Insurance Code Article 802.002 may be accepted for purposes of this subsection; and

(III) financial statements of the plan must annually be audited by an independent certified public accountant who is a member in good standing of the American Institute of Certified Public Accountants (AICPA). The audits must utilize generally accepted auditing standards and must result in a report which attests to whether the financial statements comply with generally accepted accounting principles adopted by the AICPA. Notwithstanding the preceding, an audit report filed with the Texas Department of Insurance pursuant to Texas Insurance Code Article 1.15A may be accepted for purposes of this subsection; and

(IV) the plan must have competent and trustworthy management who is generally knowledgeable of insurance matters. In no event shall a plan be eligible if a plan officer or member of the plan's board of directors or similar governing body has been convicted of a felony involving moral turpitude or breach of fiduciary duty.

(6) Rates, rating plans, and rating rules applicable. The rates, rating plans, rating rules, rating classifications, and territories applicable shall be those established pursuant to the Act, §4.

(b) Application, underwriting standards, and acceptance or rejection.

(1) Eligibility and forms.

(A) Any physician and any health care provider (as defined in the Act, §2) and any health care practitioner and health care facility (as defined in the Act, §3B) which falls within any of the categories of physicians, health care providers, health care practitioners, or health care facilities established by order of the commissioner from time to time as being eligible to obtain coverage from the association, shall be entitled to apply to the association for a policy of medical liability insurance; provided, that if the applicant is a partnership, professional association, or corporation (other than a nonprofit corporation certified under Chapter 162, Occupations Code) comprised of eligible health care providers or health care practitioners, such as physicians, dentists, or podiatrists, all of the partners, professional association members, or shareholders must also be individually insured in the association. Any category of physician or health care provider, which by order of the commissioner has been excluded from eligibility to obtain coverage from the association, may be eligible for coverage in the association if, after at least 10 days' notice and an opportunity for a

hearing, it is determined by the commissioner that medical liability insurance is not available for the category of physician or health care provider. In addition, a for-profit or not-for-profit nursing home or assisted living facility not otherwise eligible for coverage from the association is eligible for coverage if the nursing home or assisted living facility demonstrates, in accordance with the requirements of the association, that the nursing home or assisted living facility made a verifiable effort to obtain coverage from authorized insurers and eligible surplus lines insurers and was unable to obtain substantially equivalent coverage and rates. All applications for medical liability and general liability insurance shall be made on forms prescribed by the board of directors of the association and approved by the department. The application forms shall contain a statement as to whether or not there are any unpaid premiums, assessments, or stabilization reserve fund charges due from the applicant for prior insurance. Application may be made on behalf of the applicant by an agent authorized pursuant to the Insurance Code Article 21.14. Such agent need not be appointed by a servicing company.

(B) The association may issue a general liability insurance policy to an applicant specified in subparagraph (A) of this paragraph only if that applicant is issued a medical liability insurance policy by the association.

(2) Licensed agent. If a policy of liability insurance is written through a licensed agent then:

(A) the commission paid to the licensed agent shall be 10% of the first \$1,000 of such policy premium, 5.0% of the next \$9,000 of such policy premiums, and 2.0% of the policy premium in excess of \$10,000 with respect to policies written by the association on the form approved for physicians and noninstitutional health care providers;

(B) the commission paid to the licensed agent shall be 12.5% of the first \$2,000 of such policy premium, 7.5% of the next \$3,000 of such policy premium, 5.0% of the next \$15,000 of such policy premium, and 2.0% of the policy premium in excess of \$20,000 with respect to policies written by the association on the form approved for hospitals and other institutional health care providers;

(C) with respect to an excess liability insurance policy written by the association for a physician or any other health care provider (as those terms are defined in the Act) the commission paid to the licensed agent shall be 10% of the policy premium, provided, however, that the commission shall not exceed \$250 with respect to a policy written on the form approved for physicians and other noninstitutional health care providers, and shall not exceed \$500 with respect to a policy written on the form approved for hospitals and other institutional health care providers; and

(D) no commission shall be payable in respect to any assessment payable by the policyholder by reason of a deficit incurred by the association, including charges for the stabilization reserve funds. Upon cancellation, the agent shall refund any unearned portion of the commission to the association.

(3) Submission. Application for medical liability or general liability insurance on the prescribed form shall be accompanied by tender of the amount of the deposit premium and the charge for the stabilization reserve fund required to bind the policy.

(4) Underwriting standards.

(A) The following underwriting standards shall apply with respect to policies of medical liability insurance written by the association:

(i) all applicants to the association shall be currently licensed, chartered, certified, or accredited to practice or provide their respective health care services in Texas;

(ii) all health care provider, practitioner and facility and physician applicants to the association shall provide evidence of inability to obtain medical liability coverage. Two rejections by carriers, including insurers licensed and engaged in writing the coverage applied for in Texas or a self-insurance trust created under Insurance Code Article 21.49-4, shall be deemed adequate to show inability and rejections may be evidenced by valid notification from the insurers or trust or by sworn affidavit of the applicant or the applicant's agent that the rejections have occurred;

(iii) all for-profit and not-for-profit nursing home and assisted living facility applicants to the association shall provide evidence of inability to obtain coverage from authorized insurers and eligible surplus lines insurers for substantially equivalent coverage and rates. Two rejections by insurers licensed and engaged in writing the coverage applied for in Texas or eligible surplus lines insurers shall be deemed adequate to show inability and rejections may be evidenced by valid notification from the insurers or by sworn affidavit of the applicant or the applicant's agent that the rejections have occurred;

(iv) any material misrepresentation in the application for coverage shall be cause to decline coverage upon discovery by the association or its authorized representative;

(v) each application shall be accompanied by authorization for and consent to investigations of material information bearing upon the moral character, professional reputation, and fitness to engage in the activities embraced by the applicant's license with respect to applicants who are to be provided coverage on the form approved for physicians and noninstitutional health care providers, or the reputation, method of operation, accident prevention programs, and fitness to engage in the activities embraced by the applicant's license, charter, certificate, or accreditation with respect to applicants who are to be provided coverage on the form approved for hospitals and other institutional health care providers, including authorization to every person or entity, public or private, to release to the association any documents, records, or other information bearing upon this information;

(vi) no coverage may be afforded either by binder or by policy issuance to any applicant whose license, charter, certificate, or accreditation has been ordered cancelled, revoked, or suspended; provided, that if the order has been probated by the appropriate regulatory body or licensing agency the probation may be reviewed by the association for a determination whether, and on what basis, coverage may be afforded in the association;

(vii) the applicant, to be eligible for coverage in the association, shall comply with all significant recommendations arising out of a loss control or risk management report either prior to binding coverage or as soon as practicable concurrently with coverage;

(viii) there shall be no unpaid, uncontested premium, assessment, or charge due from the applicant.

(B) For the purpose of this section, a rejection shall have occurred if the applicant is accepted in the admitted voluntary market at a rate higher than those rates approved by the commissioner from time to time under this plan.

(5) Receipt of the application. Upon receipt of the application, the required deposit premium and the applicable stabilization reserve fund charge, the association shall, within 30 days:

(A) cause a binder or policy of insurance to be issued;  
or

(B) advise the agent or applicant that the applicant does not meet the underwriting standards of the association, in which case the association shall indicate the reasons the applicant does not meet the underwriting standards.

(c) Cancellation, nonrenewal, and notice.

(1) Cancellation by the association. The association may not cancel a policy of insurance except for:

(A) nonpayment of premium; or

(B) nonpayment of the applicable stabilization reserve fund charge; or

(C) nonpayment of assessment; or

(D) evidence of fraud or material misrepresentation; or

(E) cause which would have been grounds for nonacceptance of the risk under this subchapter had such cause been known to the association at the time the policy was issued; or

(F) any cause arising subsequent to the issuance of the policy which would have been grounds for nonacceptance of the risk under this subchapter had such cause existed at the time of acceptance; or

(G) noncompliance with reasonable loss control or risk management recommendations in accordance with subsection (b)(4)(A)(vii) of this section. Upon cancellation of a policy of insurance by the association, the association shall refund to the insured the unearned portion of any paid premium and, if cancelled within the 90th day of coverage, the unearned portion of the paid \$4A fund or \$4B fund charge on a pro rata basis provided all assessments and \$4A fund or \$4B fund charges earned have been fully paid; otherwise, only that portion of unearned premium over any unpaid assessment and \$4A fund or \$4B fund charge will be refunded. Policyholder assessments and \$4A fund or \$4B fund charges are fully earned upon payment; therefore, except as provided in the Act, or §5.2003(c)(2) of this title (relating to Members and Policyholders Participation in the Texas Medical Liability Insurance Underwriting Association), no portion is refundable.

(2) Cancellation by the insured. A policy of insurance may be cancelled at any time:

(A) by the insured upon written request for cancellation of the policy; or

(B) by an insurance premium finance company in accordance with the provisions contained in the Insurance Code Article 24.17.

(3) Refund of unearned portion of paid premium. The association shall refund the unearned portion of any paid premium, and if cancelled within the 90th day of coverage, the unearned portion of the paid \$4A fund or \$4B fund charge according to the approved short rate table, provided all assessments and \$4A fund or \$4B fund charges earned have been fully paid; otherwise, only that portion of the unearned premium over any unpaid assessment and \$4A fund or \$4B fund charge will be refunded. Policyholder assessments and \$4A fund or \$4B fund charges are fully earned upon payment; therefore, except as provided in the Act, or §5.2003(c)(2) of this title no portion is refundable.

(4) Exhausted policy limits. If there is outstanding a claim or claims under any policy of insurance on which a reserve or reserves have been established, which in the aggregate or when combined with losses previously paid under such policy, equal or exceed the aggregate limits of coverage under such policy, then the association shall notify

the insured and at the option of the insured the policy may be cancelled and, if cancelled, the premium shall be fully earned and the insured may apply for a new policy to be effective concurrently with the termination date of the cancelled policy.

(5) Notice of cancellation, nonrenewal, or premium increase.

(A) The association may cancel a policy of medical liability insurance and general liability insurance or decline to renew such policy for any reason listed in paragraph (1) of this subsection at any time within the first 90 days from the effective date of the policy by sending 90 days written notice to the insured.

(B) The association may cancel a policy of medical liability insurance and general liability insurance or decline to renew such policy for nonpayment of premium, assessments, or §4A fund or §4B fund charges or loss of license, charter, certification, or accreditation at any time during the policy period by sending 10 days' written notice to the insured.

(C) Notice of cancellation or nonrenewal pursuant to subparagraphs (A) and (B) of this paragraph shall contain a statement of the reason for such cancellation or nonrenewal and a statement that the insured has the right to appeal pursuant to the Act, §7.

(D) The association shall give at least 90 days' written notice to an insured before increasing the premium by reason of a rate increase on the insured's medical liability insurance policy. The notice shall state the amount of the increase.

(6) General liability insurance. A policy of general liability insurance issued by the association pursuant to the Act, §3(d) shall automatically terminate on the same effective date and time as the termination of the medical liability insurance policy.

(d) Suspension of policy. The association shall, upon written request from a policyholder subject to the Servicemembers Civil Relief Act of 2003 (50 United States Code App. §§501, et seq.), suspend the policy issued by the association, in accordance with the Servicemembers Civil Relief Act of 2003.

(e) Removal of risks. Any member, or self-insurance trust established under the Insurance Code Article 21.49-4, at any time, upon written consent from the insured filed with the association may write the risk as regular business, in which event the association shall cancel its policy pro rata as of a date and time specified by the manager of the association. The association will require written confirmation that the member or self-insurance trust is taking the risk out of the association before allowing pro rata cancellation.

(f) Payment of claims.

(1) Report of loss. All losses shall be reported to the association in the manner prescribed by the board of directors.

(2) Adjustment of loss. All losses shall be adjusted in the manner designated by the board of directors subject to the provisions of this plan and the insurance laws of Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 3, 2005.  
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Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
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For further information, please call: (512) 463-6327

## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER GG. INSURANCE TAX

##### 34 TAC §3.833

The Comptroller of Public Accounts adopts new §3.833 concerning certified capital companies and certified investor premium tax credits, with changes to the proposed text as published in the October 22, 2004, issue of the *Texas Register* (29 TexReg 9813).

It addresses the creation of certified capital companies (CAPCOs) and premium tax credits by insurers and other persons that invest in them. This section pertains to investments of certified capital in CAPCOs by certified investors. It describes the procedures for application to the Comptroller of Public Accounts for certification as a CAPCO, the requirements for maintaining CAPCO status, and the process for de-certification for noncompliance with these requirements. It provides for premium tax credits for insurance companies to promote investment in CAPCOs that fund qualified businesses, early stage businesses, or strategic investment businesses, and describes the methods for claiming tax credits. This section also details the annual review conducted by the comptroller and the required reports CAPCOs must file with the comptroller. The section implements Senate Bill 601 passed by the 77th Legislature, 2001, as amended by House Bill 2425 passed by the 78th Legislature, 2003, codified at Insurance Code, Chapter 4, Subchapter B, Articles 4.51-4.73. The changes are made in response to comments received or to correct language to conform with the statutes.

Written comments were received regarding adoption of this new section. The following persons provided comment: Michael Korengold, President of Enhanced Capital Partners, LLC and Michael T. Johnson, Principal of Advantage Capital Partners, who operate CAPCOs in other states. They generally support the proposed rules as "extremely thorough, well-crafted rules that effectively resolve issues that have arisen in other state programs," but recommend clarification or expansion of certain provisions.

Comments: Both commentators expressed a concern with the definition of CAPCO headquarters included at §3.833(a)(8), which requires that 80% of a CAPCO's administrative costs be spent in Texas. The concern is that the requirement might be interpreted to prohibit the use of centralized "back-office" payroll, accounting and administrative functions that will be routinely conducted outside of Texas by their organizations. One commenter suggests the words "and administrative" be deleted from §3.833(a)(8)(A) or, alternatively, proposes adding language clarifying that such administrative functions may be performed outside of Texas.

Response: The comptroller disagrees with this comment. Nothing contained in the proposed rule prohibits a CAPCO from obtaining routine administrative services from an out-of-state provider or prohibits an affiliate of the CAPCO from providing administrative services so long as such services, in combination with other administrative costs, do not exceed 20% of a CAPCO's annual operating expenses.

Comments: Both commentators recommend clarification of the language relating to expenses incurred in the formation and funding of the CAPCO. Specifically, the commentators state that §3.833(a)(17)(A) is unclear as to whether the cost of insuring and defeasing the debt obligations of the CAPCO may be counted in the limitations on formation costs.

Response: The comptroller agrees that the specific language could be confusing and based on these comments revises §3.833(a)(17)(A).

Comment: One commenter recommends changes to §3.833(i)(2), which disqualifies investments in any previously qualified business that relocates its principal business operations outside Texas during the term of the CAPCO investment. The commenter suggests that if the qualified business maintains its headquarters in Texas, it should not have to meet the principal operation requirement that 80% of the CAPCO's employees reside in Texas. The commenter relies on language that focuses on the location of business headquarters in §3.833(d)(7).

Response: While the comptroller disagrees with this comment, it does highlight an inconsistency between the statute and the proposed rule. The enabling legislation addresses treatment of follow-on investments and clearly states under Article 4.56(e) that "a follow-on investment does not qualify as a qualified investment if, at the time of the follow-on investment, the qualified business no longer has its principal business operations in this state." Consistent with the purpose of the CAPCO legislation to promote job creation and economic development in Texas, the language at §3.833(i)(2) will not be revised, but §3.833(d)(7) will be revised to conform to the statute.

Comment: One commenter recommends changing the singular "affiliate" to the plural "affiliates" at §3.833(f)(9) to ensure that no more than one certified investor or the affiliates of that certified investor provide indemnity agreements or insurance for the benefit of a certified investor. This recommendation appears to address insurance regulatory issues. Also, the commenter is concerned that an affiliate of a certified investor would be prohibited from providing these instruments.

Response: While there may be a legitimate insurance regulatory issue, the comptroller disagrees with the recommendation to change "affiliate", which is the statutory term. The comptroller, however, agrees that only one certified investor or affiliate may provide these instruments to a CAPCO and, therefore, deletes the last sentence of §3.833(f)(9) to make this clear.

This new section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, implement, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and under Insurance Code, Article 4.52, which requires the comptroller to adopt rules to administer and implement Insurance Code, Chapter 4, Subchapter B.

The new section implements Insurance Code, Chapter 4, Subchapter B.

*§3.833. Certified Capital Companies and Certified Investor Premium Tax Credits.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate means:

(A) a person who is an affiliate for purposes of Insurance Code, Article 823.003, §2;

(B) a person who directly or indirectly:

(i) beneficially owns 10% or more of the outstanding voting securities or other voting or management interests of another person, whether through rights, options, convertible interests, or otherwise; or

(ii) controls or holds power to vote 10% or more of the outstanding voting securities or other voting or management interests of the other person;

(C) a person 10% or more of which the outstanding voting securities or other voting or management interests are directly or indirectly:

(i) beneficially owned by the other person, whether through rights, options, convertible interests, or otherwise; or

(ii) controlled or held with power to vote by the other person;

(D) a partnership in which the other person is a general partner; or

(E) an officer, director, employee, or agent of the other person, or an immediate family member of the officer, director, employee, or agent of the other person.

(2) Allocation date means the date on which the comptroller allocates premium tax credits to certified investors of a CAPCO under this section, except that in the case of a pro rata reallocation pursuant to subsection (g)(7)(B)(ii) of this section, the allocation date shall be the date of the reallocation.

(3) CAPCO means a certified capital company as defined herein.

(4) Certified capital means an investment of cash by a certified investor in a CAPCO that fully funds the purchase price of an equity interest in the company or a qualified debt instrument issued by the CAPCO.

(5) Certified capital company means a partnership, corporation, trust, or limited liability company, whether organized on a profit or not-for-profit basis, that is in good standing with the State of Texas, is headquartered in Texas and has as its primary business activity the investment of cash in qualified businesses and that is certified as meeting the criteria of this section.

(6) Certified investor means an insurance company or health maintenance organization licensed by the Texas Department of Insurance or other person that has state premium tax liability under Insurance Code, Chapter 4, or a successor statute, other than a title insurance company as defined in Insurance Code, Chapter 9, that invests certified capital pursuant to an allocation of premium tax credits under this section.

(7) Early stage business means a qualified business that satisfies at least one of the following criteria:

(A) is involved, at the time of a CAPCO's first investment, in activities related to the development of initial product or service offerings, such as prototype development or establishment of initial production or service processes;

(B) was initially organized less than two years before the date of the CAPCO's first investment; or

(C) during the fiscal year immediately preceding the year of the CAPCO's first investment had, on a consolidated basis with its affiliates, gross revenues of not more than \$2 million as determined in accordance with generally accepted accounting principles.

(8) Headquartered in Texas means the following requirements, at a minimum, are met with respect to Texas CAPCOs:

(A) the CAPCO has its principal office in Texas for operations covered under this section, in which the main investment and administrative functions of the CAPCO are conducted;

(B) the original principal books and records of the CAPCO are maintained in the Texas principal office; and

(C) a minimum of 80% of the CAPCO's expenses are spent in Texas including management fees, and administrative costs including but not limited to organizational fees, but for the purposes of this subparagraph, expenses do not include underwriting fees; closing costs (including rating agency fees, and other fees related to the closing of the CAPCO's funding); fees related to any insurance issued for a qualified debt instrument or associated premium tax credits; interest payments on indebtedness; and other expenses for services that the CAPCO demonstrates cannot be reasonably obtained in Texas.

(9) Initially organized means the date that an entity's organizational documents were first accepted as filed by the appropriate official in the state of its incorporation or organization, as applicable, or, in the case of an entity that is not required to file its organizational documents with any state official, the date on which its members, partners, or owners, as applicable, originally executed the entity's organizational documents.

(10) Person means a natural person or entity, including a corporation, general or limited partnership, trust, or limited liability company.

(11) Premium tax credit allocation claim means a claim for allocation of Texas premium tax credits on a form provided by the comptroller.

(12) Primary or primarily under this section means at least 80%.

(13) Principal business operations means at least 80% of the business organization's employees reside in Texas or 80% of the business payroll is paid to individuals living in Texas.

(14) Principal office means the location in Texas that is the primary place for investment functions of the CAPCO and the principal location for books and records of the CAPCO.

(15) Qualified business means a business that, at the time of a CAPCO's first investment in the business:

(A) is headquartered in Texas or relocates its headquarters and principal business operations to Texas within 90 days, and based on a copy of its business plan, intends to remain in Texas after receipt of an investment by the CAPCO;

(B) has its principal business operations in Texas or relocates its principal business operations to Texas within 90 days, and based on a copy of its business plan, intends to maintain business operations in Texas after receipt of an investment by the CAPCO;

(C) has agreed to use the qualified investment primarily:

(i) to support its principal business operations in Texas, other than for advertising, promotion, and sales operations, which may be conducted outside of Texas; or

(ii) in the case of a start-up company, to establish and support business operations in Texas, other than for advertising, promotion, and sales operations, which may be conducted outside of Texas;

(D) does not have more than 100 employees and:

(i) at least 80% of its employees reside in Texas; or

(ii) pays 80% of its payroll to Texas residents;

(E) is primarily engaged in:

(i) manufacturing, processing, or assembling products;

(ii) conducting research and development; or

(iii) providing services;

(F) does not incur more than 20% of its expenses and does not receive more than 20% of its income from:

(i) retail sales;

(ii) real estate development;

(iii) the business of financial services including insurance, banking, or lending; or

(iv) the provision of professional services provided by accountants, attorneys, or physicians;

(G) is not or does not:

(i) formed or organized, directly or indirectly, by a CAPCO or an affiliate of the CAPCO;

(ii) a franchisee of a CAPCO; or

(iii) an affiliate of the CAPCO; or

(iv) have any financial relationship with a CAPCO before the date on which the CAPCO makes its first investment in such business.

(16) Qualified debt instrument means a debt instrument issued by a CAPCO, at par value or a premium that:

(A) has an original maturity date of at least five years after the date of issuance;

(B) has a repayment schedule that is not faster than a level principal amortization over five years, including payments of cash and tax credits. A repayment schedule is not faster than a level principal amortization over five years if the repayment schedule for the debt instrument issued by the CAPCO has a scheduled outstanding principal balance greater than a hypothetical note with the same price and yield as the CAPCO's debt instrument that provides for principal to be amortized over equal, consecutive daily payments, where payments are first allocated to accrued interest and then to principal, however, a certified investor may receive payments at any time for future earned interest, provided the amount received does not exceed the present value of that future interest payment, discounted by a factor that is not less than the stated interest rate of the debt instrument.

(C) Has no interest, distribution, or payment features that are related to the profitability of the CAPCO or the performance of the CAPCO's investment portfolio.



(17) Qualified distribution means any distribution or payment from certified capital, the return of capital from qualified investments, or the profits earned thereon by a CAPCO in connection with:

(A) the reasonable costs and expenses of forming, syndicating, managing, and operating the CAPCO, provided that the distribution or payment is not made directly or indirectly to a certified investor or an affiliate of a certified investor, including:

(i) the reasonable costs and expenses of forming, syndicating, or organizing the CAPCO, so long as these costs;

(I) shall be limited to the greater of;

(-a-) \$250,000; or

(-b-) 5% of the amount of certified capital the CAPCO initially received as investment from its certified investors; or

(-c-) \$1,500,000; and

(II) provided that at the time the CAPCO closes its investment from its certified investors and after deducting the aggregate of the costs of organizing, forming, syndicating, insuring and defeasing the obligations, the CAPCO must have available for qualified investments, cash and/or permissible investments in an amount equal to at least 50% of the amount of certified capital initially received from its certified investors.

(ii) reasonable and necessary fees paid for professional services, including legal and accounting services, related to the operation of the company are limited to 1.0% in any calendar year of the amount of certified capital the CAPCO initially received as investment from its certified investors; and

(iii) an annual management fee in an amount that does not exceed 2.5% of the certified capital of the company;

(B) any projected increase in federal income or state taxes based on income or imputed income of the CAPCO, including penalties and interest related to those taxes, of the equity owners of the CAPCO resulting from the earnings or other tax liability of the CAPCO to the extent that the increase is related to the ownership, management, or operation of the CAPCO in Texas.

(18) Qualified investment means the investment of cash by a CAPCO in a qualified business for the purchase of any debt, debt participation, equity, or hybrid security of any nature or description, including a debt instrument or security that has the characteristics of debt, but that provides for conversion into equity or equity participation instruments such as options or warrants; provided that the investment must not have a final stated maturity or be subject to mandatory redemption or repurchase prior to two years from the date of initial investment and, provided further, that not more than 50% is used to refinance existing debt. Notwithstanding the foregoing, a qualified investment shall not include an investment that results, or could result, in a CAPCO owning 50% or more of the voting or non-voting stock of a qualified business, unless:

(A) such ownership is the result of:

(i) the CAPCO's exercise of its rights and remedies following a default in the obligations of the qualified business;

(ii) the CAPCO's exercise of preemptive rights granted to it in connection with its initial investment in a qualified business, provided such rights are exercised in connection with an investment in such qualified business by a party other than the CAPCO or an affiliate of the CAPCO;

(iii) the operation of any anti-dilution rights granted to a CAPCO in connection with its initial investment in a qualified business; or

(B) such investment is approved by the comptroller prior to its being made.

(19) State premium tax liability means:

(A) any gross insurance premium tax or health maintenance organization gross receipts tax liability incurred by any person under Insurance Code, Chapter 4; or

(B) if the gross premium tax liability imposed under Insurance Code, Chapter 4, on January 1, 2003, is eliminated or reduced, any substitute tax liability imposed on an insurance company or other person that had premium tax liability or health maintenance organization gross receipts tax liability under the Insurance Code on that date.

(20) Strategic investment area means an area of Texas that qualifies at the time of investment as a strategic investment area under Tax Code, Chapter 171, Subchapter O, or after the expiration of that subchapter, an area that qualified as a strategic investment area under that subchapter immediately before its expiration.

(21) Strategic investment business means a qualified business that has its principal business operations located in one or more strategic investment areas and that intends to maintain business operations in the strategic investment areas after receipt of an investment by the CAPCO as documented in the business plan or other business records that were generated at or before the time of the investment.

(b) Application Process. Any entity that seeks to operate in Texas as a CAPCO under the provisions of the Insurance Code shall comply with the application procedures set forth in this section. The comptroller will begin accepting applications for certification as a CAPCO 30 days after the adoption of this section.

(1) An applicant must file with the comptroller the following:

(A) a completed Application for Certification on a form provided by the comptroller;

(B) a nonrefundable application fee of \$7,500;

(C) an audited balance sheet with an unqualified opinion from an independent certified public accountant and any Statement of Auditing Standard No. 61 communications provided by the auditor, as of a date not more than 35 days before the date of application;

(D) documentation that the prospective CAPCO is duly organized and qualified to do business in Texas;

(E) evidence of an equity capitalization of at least \$500,000 in the form of unencumbered cash or cash equivalents;

(F) evidence that at least two principals or persons employed or engaged to manage the funds of the applicant have at least four years of experience in the venture capital industry;

(G) a commitment that if certified, the CAPCO will establish in Texas its headquarters within 60 days of certification; and

(H) biographical, personal, financial, investment, and historical data for each manager, principal, and the entity itself that provides the following, as applicable:

(i) prior venture capital firms with which the manager or principal was employed that specifically includes details on:

(I) the valuation of portfolio investments, including the manager or principal's ability to structure and execute timely and effective exits from portfolio investments;

(II) historical investment performance of prior firms managed by the same managers or principals;

(III) historical performance of the CAPCO and each of the managers or principals identified in subparagraph (F) of this paragraph, relating to investments in early stage businesses;

(IV) the investment philosophy of the firm;

(V) the history and strategy of the CAPCO and its managers or principals for obtaining investors and making investments, particularly in the targeted areas of early stage businesses and strategic investment businesses or comparable targeted early stage investments or investments in the underserved areas in Texas or other states;

(VI) disclosure of any fines, penalties, or other sanctions or actions by any state, federal, or other regulatory entity, including the Securities and Exchange Commission against the CAPCO or its managers or principals, relating to violations of any type; and

(VII) a five-year business plan, which shall include the applicant's investment strategy and investment criteria and which must comply with the requirements of subsection (a) paragraph (18) of this section with respect to qualified investments in qualified businesses. If the comptroller determines that an applicant's investment strategy or investment criteria would not effectively further economic development in Texas the applicant's certification may be denied.

(ii) any other information that the comptroller may later request to determine the quality of the firm's management, reputation, code of ethics, investment strategy, and practices.

(2) Any false, inaccurate, or misleading information provided in the application may be grounds for rejection of the application and denial of further consideration, as well as decertification, if the information, discovered at a subsequent date, would have resulted in the denial of the certification. The applicant shall also notify the comptroller as soon as possible or within 10 business days of the following:

(A) when the applicant is unable to continue as a viable going concern; and

(B) when the applicant is subject to litigation that may affect its viability as a going concern.

(3) Management by certain entities prohibited. An insurance company, group of insurance companies, or other persons who may have state premium tax liability or the affiliates of the insurance companies or other persons may not, directly or indirectly:

(A) manage a CAPCO;

(B) beneficially own, whether through rights, options, convertible interest, or otherwise, more than 10% of the outstanding voting securities of a CAPCO; or

(C) control the direction of investments for a CAPCO.

(4) Paragraph (3) of this subsection applies without regard to whether the insurance company or other person or the affiliate of the insurance company or other person is licensed by or transacts business in Texas.

(5) Paragraphs (3) and (4) of this subsection do not preclude a certified investor, insurance company, or any other party from exercising its legal rights and remedies, including interim management of a CAPCO, if authorized by law, with respect to a CAPCO that is in default of its statutory or contractual obligations to the certified investor, insurance company, or other party.

(6) The date of receipt of an application is the postmark date or the date of the independent delivery. Incomplete applications shall be treated as not received. All submissions to the comptroller

may be either by hand delivery or via overnight common carrier to the attention of CAPCO Administrator, Texas Treasury Safekeeping Trust Company, 208 E. 10th Street, Austin, Texas 78701.

(7) The comptroller shall review the application and all required documents to ensure that the applicant satisfies the requirements for certification as a CAPCO. Within 30 days of the date of receipt of an application the comptroller shall:

(A) issue the certification; or

(B) refuse to issue the certification and provide to the applicant the grounds for the refusal, including suggestions for the removal of those grounds. The comptroller shall have 10 business days from the day that the additional information was submitted to approve or reject the application and certification request.

(c) Offering material used by a CAPCO. Any offering material involving the sale of securities of a CAPCO must include the following statement: BY AUTHORIZING THE FORMATION OF A CERTIFIED CAPITAL COMPANY, THE STATE OF TEXAS DOES NOT ENDORSE THE QUALITY OF MANAGEMENT OR THE POTENTIAL FOR EARNINGS OF THE COMPANY AND IS NOT LIABLE FOR DAMAGES OR LOSSES TO A CERTIFIED INVESTOR IN THE COMPANY. USE OF THE WORD "CERTIFIED" IN AN OFFERING DOES NOT CONSTITUTE A RECOMMENDATION OR ENDORSEMENT OF THE INVESTMENT BY THE COMPTROLLER OF PUBLIC ACCOUNTS. IF APPLICABLE PROVISIONS OF LAW ARE VIOLATED, THE STATE OF TEXAS MAY REQUIRE FORFEITURE OF UNUSED PREMIUM TAX CREDITS AND REPAYMENTS OF USED PREMIUM TAX CREDITS.

(d) Requirements for renewal and continuance of certification. A CAPCO must comply with the requirements for renewal and continuance of certification set forth in this subsection.

(1) Each CAPCO shall pay a nonrefundable renewal fee of \$5,000 to the comptroller not later than January 31 of each year, except that a renewal fee is not required within six months of the date on which the certification is issued.

(2) If a CAPCO fails to pay its renewal fee on or before January 31 of each year, the company must pay, in addition to the renewal fee, a late fee of \$5,000 to continue its certification.

(3) If a CAPCO fails to pay the renewal fee and late fee as stated in paragraph (2) of this subsection within 60 days after January 31, the CAPCO shall be subject to decertification.

(4) To continue to be certified, a CAPCO must make qualified investments of certified capital received from certified investors according to the following schedule:

(A) before the third anniversary of its allocation date, a CAPCO must have made qualified investments in an amount cumulatively equal to at least 30% of its certified capital; and

(B) before the fifth anniversary of its allocation date, a CAPCO must have made qualified investments in an amount cumulatively equal to at least 50% of its certified capital, subject to the following:

(i) at least 50% of the dollar amount of qualified investments required in subparagraph (B) of this paragraph must be placed in early stage businesses; and

(ii) at least 30% of the dollar amount of qualified investments required in subparagraphs (A) and (B) of this paragraph must be placed in strategic investment businesses.

(5) The aggregate cumulative amount of all qualified investments made by the CAPCO after its allocation date shall be considered in the computation of the percentage requirements in paragraph (4) of this subsection, subsection (i) of this section, and any other applicable provisions in this section. Any investment returns or profits received by the CAPCO from a qualified investment may be invested in another qualified investment and counted towards any requirement in this section with respect to investments of certified capital.

(6) Any amounts received by a certified capital company from a qualified business as commitment fees, closing fees, license fees, royalties or similar charges shall be considered as reductions in the CAPCO's qualified investments in the computation of the percentage requirements in paragraph (4) of this subsection, subsection (i) of this section, and any other applicable provisions in this section.

(7) A business that is classified as a qualified business, early stage business, or strategic investment business at the time that the CAPCO first invests in the business remains classified as a qualified business, early stage business, or strategic investment business. The business may receive follow-on investments from any CAPCO, even though the qualified business may not meet the definition of a qualified business, early stage business, or strategic investment business, as applicable, at the time of the follow-on investment, unless the qualified business no longer has its principle business operations in Texas.

(8) A CAPCO may not make a qualified investment the cost of which is greater than 15% of the total certified capital of the CAPCO at the time of investment.

(9) A CAPCO shall invest any certified capital not invested in qualified investments only in the following, provided however, that any such investments are not assigned, pledged, restricted, or otherwise encumbered for the benefit of an affiliate of a CAPCO:

(A) cash deposited with a federally insured financial institution located in Texas that is not affiliated with the CAPCO;

(B) certificates of deposit in a federally insured financial institution located in Texas that is not affiliated with the CAPCO;

(C) investment securities that are obligations of the United States or its agencies or instrumentalities or obligations that are guaranteed fully as to principal and interest by the United States;

(D) debt instruments rated at least "A" or its equivalent at the time of purchase by a nationally recognized credit rating organization, or issued by, or guaranteed with respect to payment by an entity whose unsecured indebtedness is rated at least "A" or its equivalent by a nationally recognized credit rating organization and which indebtedness is not subordinated to other unsecured indebtedness of the issuer or the guarantor provided that the debt instruments are not procured through a financial institution affiliated with the CAPCO;

(E) obligations of Texas or any municipality or political subdivision of Texas provided that the obligations are not procured through a financial institution affiliated with the CAPCO; and

(F) any other investments approved in advance and in writing by the comptroller.

(10) If a qualified business moves its principal business operations outside Texas before the 90th day after a CAPCO makes an investment in it, the investment is not considered a qualified investment for the purposes of the percentage requirements in paragraph (4) of this subsection, subsection (i) of this section, and any other applicable provisions in this section.

(e) Annual review. Each CAPCO is subject to review as specified in this section to determine compliance with rules and statutes.

(1) The comptroller shall conduct an annual review of each CAPCO to:

(A) ensure that the CAPCO continues to satisfy the requirements of this section and Insurance Code, Articles 4.51 - 4.73;

(B) ensure that the CAPCO has not made any investment in violation of this section and Insurance Code, Articles 4.51 - 4.73; and

(C) determine the eligibility status of its qualified investments.

(2) Each CAPCO shall pay the reasonable cost for the annual review to be billed by the comptroller or, if the review is conducted by an independent examiner under the authority of the comptroller, the CAPCO shall reimburse the comptroller.

(f) Decertification. A CAPCO may be decertified for violations of this section or the Insurance Code, and premium tax credits may be recaptured and forfeited to the extent expressly set forth in this section or in the Insurance Code.

(1) A material violation of Insurance Code, Articles 4.56, 4.58, or 4.59 is grounds for decertification of a CAPCO. The comptroller shall notify the officers of the CAPCO in writing of the violations and that the company may be decertified after 120 days from the date on which the notice is mailed, unless the violations are corrected as determined by the comptroller.

(A) Violations of Insurance Code, Articles 4.56(a), 4.56(b), 4.56(f) or 4.56(h) shall constitute a material violation of the statutes.

(B) Two consecutive violations of the requirements of Insurance Code, Article 4.58 or 4.59 shall constitute a material violation of the statute.

(C) Two or more consecutive instances of a CAPCO failing to pay fees or penalties on a timely basis, two or more consecutive omissions of required information, a misstatements of facts in applications or annual reports, shall constitute material violations of the statutes.

(2) A hearing is available to a CAPCO that is subject to decertification as provided in Chapter 1, Subchapter A, Division 1, §§1.1-1.42 of this title (relating to Central Administration).

(3) Decertification is effective on the date on which the company receives notice of decertification from the comptroller. Notices will be sent via certified mail or via an overnight common carrier delivery service, and become effective on receipt by the CAPCO.

(4) In the event of decertification of a CAPCO, the comptroller shall notify any appropriate state agency of the decertification including, but not limited to the Secretary of State, the Office of Economic Development and Tourism, and the Office of the Insurance Commissioner.

(5) Premium tax credits previously claimed shall be recaptured and future premium tax credits shall be forfeited following decertification of a CAPCO in accordance with the provisions of Insurance Code, Article 4.63.

(6) When a CAPCO has invested an amount equal to 100% of its certified capital in qualified investments, any premium tax credit claimed or to be claimed by a certified investor is not subject to recapture or forfeiture.

(7) The comptroller will send a written notice to each certified investor whose premium tax credit is subject to recapture or forfeiture for failure of the CAPCO to maintain certification eligibility. Notification will be sent in accordance with paragraph (3) of this subsection.

(8) The comptroller may impose an administrative penalty on any CAPCO that violates the provisions of this section. Each day a violation continues or occurs is a separate violation. The maximum penalty may not exceed \$25,000 for each violation.

(A) The penalty amounts are based on the following:

- (i) seriousness of the violations, including the nature, circumstances, extent, and gravity of the violation;
- (ii) economic harm caused by the violation;
- (iii) history of previous violations;
- (iv) amount necessary to deter a future violation;
- (v) efforts to correct the violation; and
- (vi) any other matter that justice may require.

(B) Each of the following is a separate violation that is subject to a penalty of \$5,000. Thereafter, an additional penalty of \$5,000 will be imposed for each 30 day period the violation remains uncorrected:

- (i) failure to file annual reports by January 31;
- (ii) failure to maintain in the principal office in Texas all financial, administrative, management and investment records, including details of both qualified investments and unqualified investments;
- (iii) failure to report names and addresses of certified investors, including the date and amount of investments;
- (iv) failure to file an annual audited financial statement with an unqualified opinion and any Statement of Auditing Standard No. 61 communication by April 1; and
- (v) failure to provide detailed financial and investment information that supports each annual report.

(C) Each of the following is a separate violation that is subject to a penalty of \$10,000. Thereafter, an additional penalty of \$10,000 will be imposed for each 30 day period the violation remains uncorrected:

- (i) failure to maintain the primary CAPCO office in Texas;
- (ii) investment in a business that is found to be unqualified, without first requesting from the comptroller an evaluation of the business as provided under subsection (g) of this section; and
- (iii) failure to provide information about the CAPCO's operation within 30 days after the comptroller requests the information.

(D) If a CAPCO is assessed penalties, a re-determination hearing may be requested as provided in Tax Code, Chapter 111.

(9) Indemnity Agreements and Insurance Authorization. A CAPCO may agree to indemnify or purchase insurance for the benefit of a certified investor for losses resulting from the recapture or forfeiture of premium tax credits under Insurance Code, Article 4.63. Any guaranty, indemnity, bond, insurance policy, or other payment undertaking made under this section may not be provided by more than one certified investor of the CAPCO or affiliate of the certified investor.

(g) Premium Tax Credits. In the year a certified investor makes an investment of certified capital, the certified investor shall earn a vested premium tax credit that is equal to the amount of the investment, subject to the other provisions in this section. Beginning with the tax report due March 1, 2009, for the 2008 tax year, a certified investor may take up to 25% of these tax credits each year until all credits have been used. The credit may not be applied to estimated payments due in 2008, but may be applied to estimated payments beginning with those made in 2009.

(1) The credit to be applied against state premium tax liability in any one year may not exceed the state premium tax liability of the certified investor for the taxable year. Any unused credit against state premium tax liability may be carried forward indefinitely until the premium tax credits are used.

(2) A certified investor claiming a credit against state premium tax liability earned through an investment in a Texas CAPCO is not required to pay any additional retaliatory tax levied under Insurance Code, Article 21.46, as a result of claiming that credit.

(3) A premium tax credit allocation claim form for certified investors must be prepared and executed by each CAPCO receiving an investment commitment, on a form provided by the comptroller. A CAPCO and its affiliates may not file premium tax credit allocation claims in excess of the maximum amount of certified capital for which premium tax credits may be allowed. The form shall include an affidavit of the certified investor that legally binds the investor to make an investment of certified capital in an amount allocated by the comptroller. The forms are due from each CAPCO not later than the 120th day after the date the CAPCO rule is adopted.

(4) The comptroller shall notify each CAPCO of the amount of tax credits allocated to each certified investor not later than the 15th business day after the date on which the comptroller accepts premium tax credit allocation claims.

(5) A certified investor's tax credits are limited to the amount of certified capital as allocated or as subsequently reallocated by the comptroller and funded by the certified investor. The maximum request for premium tax credits that any one individual certified investor, on an aggregate basis with its affiliates, may request in one or more premium tax allocation claim forms submitted pursuant to paragraph (1) of this subsection may not exceed the greater of:

- (A) \$10 million; or
- (B) 15% of the maximum aggregate amount available under Insurance Code, Article 4.67(a).

(6) The total amount of credits allowed is \$200 million for all years. Total annual credits are limited to the lesser of \$50 million per year, or 25% of the total amount of investment. A CAPCO, together with its affiliates, may not file premium tax credit allocation claims on behalf of its investors in excess of \$200 million.

(7) Pro rata allocation of credits.

(A) The comptroller shall perform a pro rata allocation of the total amount of premium tax credits under this if:

(i) the total amount of certified capital requested under paragraph (3) of this subsection exceeds the total limit on credits under paragraph (6) of this subsection; or

(ii) if an allocation of credits under clause (i) of this subparagraph has occurred and a CAPCO notifies the comptroller either by hand delivery or overnight common carrier delivery service that it did not receive an investment of certified capital equal to the amount of the investment commitment from one or more investors, as provided

on the premium tax credit allocation form that is filed under paragraph (3) of this subsection, before the end of the 10th business day after the date of receipt of the notice of allocation.

(B) the pro rata allocation for each certified investor shall be computed as follows:

(i) for an allocation under subparagraph (A)(i) of this paragraph, a fraction, the numerator of which is the value determined in paragraph (5) of this subsection for each certified investor and the denominator of which is the total amount of all premium tax credit allocation claims that are filed under paragraph (3) of this subsection, for all certified investors, multiplied by the total limit on credits of \$200 million as provided by paragraph (6) of this subsection.

(ii) for a reallocation under subparagraph (A)(ii) of this paragraph, the comptroller shall reallocate the forfeited premium tax credit allocation among the other certified investors in all CAPCOs that originally received an allocation, in an amount that will ensure a result after reallocation that is the same as if the original request for the forfeited allocation had not been included in the allocation process.

(8) Premium tax credits allocated under this subsection may be transferred or assigned as provided in §3.830 of this title (relating to Premium Tax Credit for Examination Expenses, Evaluation Fees, Assessments, and Certified Capital Companies (CAPCOs), Limitations and Transfers). The transfer or assignment of a premium tax credit does not affect the schedule for taking premium tax credits under this section. The transfer, sale, or assignment of premium tax credits, are subject to the follow conditions:

(A) Failure to comply with §3.830 of this title, could jeopardize the investor's ability to transfer premium tax credits.

(B) Any liability with respect to premium tax credits transferred pursuant to Insurance Code, Article 4.71, that are recaptured pursuant to Insurance Code, Chapter 4, Subchapter B, shall be the responsibility of the taxpayer that actually claimed the credit.

(9) If a CAPCO is decertified, the comptroller will adjust any tax report records that are impacted by the recapture or forfeiture of premium tax credits and will enforce the collection of additional premium taxes as a result of the recapture or forfeiture. For purposes of this section in the recapture of tax credits taken, the provisions of Tax Code, §111.207, shall apply as if the limitation period had been tolled before the end of the limitation under Tax Code, §111.204. These provisions shall apply to all insurers and persons, including those who received a transfer or assignment of the credits to be adjusted or recaptured.

(h) Evaluation of Proposed Qualified Business. Before a CAPCO makes an investment, it may request that the comptroller determine whether the business is a qualified business, an early stage business, or a strategic investment business. The CAPCO shall provide all information it has gathered on the business including its plan of operation and plans for future expansion. The request may be denied if the comptroller determines that the proposed investment is not consistent with the CAPCO's investment strategy or investment criteria as approved by the comptroller at certification.

(1) Not later than 15 business days following receipt of a request, the comptroller shall issue a determination of whether the business meets the definition of a qualified business, early stage business, or strategic investment business.

(2) The comptroller may notify the CAPCO that an additional 15 business days will be needed to review and make the determination.

(3) If the comptroller fails to notify the CAPCO as provided under either paragraph (1) or (2) of this subsection, the business is considered to be a qualified business, early stage business, or a strategic investment business, as appropriate.

(i) Qualified distributions and repayment of debt. A CAPCO may make a qualified distribution at any time. A CAPCO may make a distribution or payment that is not a qualified distribution only if the CAPCO has made original qualified investments in an amount cumulatively equal to 100% of its certified capital.

(1) A CAPCO may make repayments of principal and interest on its indebtedness without regard to this subsection, and without restriction, including repayments of indebtedness of the CAPCO on which certified investors earned premium tax credits. Repayments do not relieve the CAPCO of the requirements for renewal and continuance of certification under subsection (d) of this section.

(2) If a business in which a qualified investment has been made relocates its principal business operations outside Texas during the term of the CAPCO's investment in the business, the cumulative amount of qualified investments made by the CAPCO, for purposes of satisfying the requirements of this subsection, is reduced by the amount of the CAPCO's qualified investments in this business. This provision shall not apply if the business demonstrates that it has returned its principal business operations to Texas not later than 90 days after the date of its relocation.

(3) If a qualified business in which a qualified investment has been made is subsequently acquired by or merged into another entity, whether headquartered inside or outside of Texas during the term of the CAPCO investment in the business, it will remain a qualified investment and not be subject to paragraph (2) of this subsection, if after the acquisition or merger and for the duration of the CAPCO's investment in the business, the business continues to operate within the remaining provisions of this section for qualified business as stated in subsection (a)(15) of this section.

(4) If, after a CAPCO initially invests in a qualified business, there is a subsequent follow on investment in that qualified business, the investment will be considered an additional qualified investment for purposes of satisfying the provision requiring investment milestones.

(j) Required reports. Each CAPCO shall report to the comptroller:

(1) as soon as practicable after receipt of certified capital, but not to exceed 45 days;

(A) the certified investors name, address, and taxpayer identification number;

(B) the date and amount of investment received by the CAPCO from each certified investor; and

(C) the type and amount of security issued by the CAPCO to the certified investors in exchange for the investment resulting in premium tax credits, including the names of the companies that issued the security together with a copy of the security instrument.

(2) An annual report due each January 31 that contains:

(A) the amount of the CAPCO's certified capital, including details of all investments, at the end of the preceding calendar year, including but not limited to whether or not the company has invested more than 15% of its total certified capital in any one business at cost;

(B) a detailed listing of investment violations under this section;

(C) each qualified investment the CAPCO made during the preceding year and, with respect to each qualified investment, the number of retained jobs and the average wages paid per employee of the qualified business at the time the qualified investment was made;

(D) the number of jobs created by the investment and the average wages paid for the jobs;

(E) the classification of the qualified businesses according to the industrial sector and the size of the business;

(F) a copy of the business plan or plan of operation for each of the qualified businesses in which the CAPCO invested in the preceding year; and

(G) any other information the comptroller requires by notification or instructions to each CAPCO.

(3) An annual audited financial statement for the prior calendar year ending December 31, by April 1, that includes the opinion of an independent certified public accountant. The auditor shall also address the methods of operation and conduct of the business of the company by performing certain agreed upon procedures to determine whether:

(A) the company is complying with Insurance Code, Chapter 4, Subchapter B, with respect to the CAPCO requirements and the rules adopted in this section;

(B) the funds received by the company have been invested as required within the time provided by Insurance Code, Article 4.56(a); and

(C) the company has invested the funds in qualified businesses.

(k) Report to the legislature. The comptroller shall prepare a biennial report to the legislature with respect to results of implementation of this section. This report shall be filed with the governor, the lieutenant governor, and the speaker of the house of representatives, not later than December 15 of each even-numbered year. The report shall include:

(1) the names and number of CAPCOs holding certified capital;

(2) the amount of certified capital invested in each CAPCO;

(3) the amount of certified capital the CAPCO has invested in qualified business, including the names and locations of the businesses, as of January 1, 2006, and each subsequent year;

(4) the amount of tax credits granted based on certified investments along with the tax credits taken by year;

(5) the performance of each CAPCO with respect to renewal and reporting requirements;

(6) information concerning qualified businesses in which CAPCOs have invested, and is to include:

(A) the classification of the businesses, along with the industrial sector and size of each business;

(B) the total number of jobs created by the investment and the average wages paid for the jobs; and

(C) the total number of jobs retained as a result of the investment and the average wages paid for the jobs;

(7) a list of the CAPCOs that have been decertified or that have failed to renew the certification and the reason for any decertification.

(l) Confidentiality: any information containing confidential business or trade secrets shall be kept confidential only to the extent provided by the Texas Public Information Act, Texas Government Code, Chapter 552.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 3, 2005.

TRD-200500002

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: January 23, 2005

Proposal publication date: October 22, 2004

For further information, please call: (512) 475-0387

## PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

### CHAPTER 301. RULES OF THE TEXAS STATEWIDE EMERGENCY SERVICES RETIREMENT FUND

#### 34 TAC §301.5, §301.10

The State Board of Trustees for the Texas Statewide Emergency Services Personnel Retirement Fund (Fund) adopts amendments to 34 Texas Administrative Code §301.5, relating to billings and annual reports; and new 34 Texas Administrative Code §301.10, relating to standard of conduct for financial advisors and service providers. The amendments to §301.5 are adopted with changes to the proposed text as published in the November 5, 2004, issue of the *Texas Register* (29 TexReg 10219). Section 301.10 is adopted without changes to the proposed text and will not be republished.

Section 301.5 is amended to reduce administrative costs associated with the billing and receiving of pension fund contributions from local governmental plan sponsors by allowing for electronic funds transfer. Section 301.10 is adopted because the agency is now withholding federal income taxes from pension checks. The new section specifies what payees must do in order to have federal income taxes withheld from their pension checks in the future.

Section 301.5 is adopted with changes from its published version. These changes consist of replacing the word "subdivision" with "governing entity" wherever the word occurs to more clearly and accurately describe the responsible entity. The changes in the adopted amendments reflect a non-substantive variation from the proposed amendments. The Board's legal representative has advised that the changes affect no new persons, entities or subjects other than those given notice and that compliance with the adopted section will not be more burdensome than under the proposed section. Accordingly, republication of the adopted section, as proposed amendments, is not required.

There were no comments received regarding the proposed amendments or new section.

The amendments and new section are adopted under Texas Revised Civil Statutes, Article 6243e.3, §21 that provides the Board of Trustees with the authority to establish rules necessary for the administration of the Fund, and Article 6243e.3, §2.(o) which authorizes the Board to adopt rules to implement the Act.

§301.5. *Billings and Annual Reports.*

(a) Billings.

(1) Each Governing body shall contribute the funds for the department's participation in the retirement system.

(2) To facilitate the collection of member contributions, the Chairman of the Local Board of trustees of each participating department, before 10 days of the last day of the quarter, shall file with the Commissioner a certified membership roster that states the name of each member of the department who is a member of the retirement systems.

(3) The Commissioner shall bill governing entities on a quarterly basis on the last business day of the following months:

- (A) November
- (B) February
- (C) May
- (D) August

(4) Billings: The Commissioner shall send to the chairman of the local board of trustees of each participating department, 30 days before the last day of the quarter, a pension roster report details the name of each member of the department who is identified as a member of the retirement system, and a summary of contribution charges and credits. This pension roster report will fully disclose the basis for the billing.

(A) The chairman of the local board of trustees or department head shall review the accuracy of the pension roster report. To add or terminate members incorrectly identified in the pension roster report, departments must file appropriate personnel forms to add or terminate members. Departments need to complete this process no later than 5 days before the end of the quarter.

(B) On the last day of each quarter, the Commissioner shall bill the governing entity for:

- (i) monthly contributions for participating members,
- (ii) prior service contributions,
- (iii) House Bill 258 pension payments on behalf of the department,
- (iv) late payment interest charges,
- (v) administrative penalties, and
- (vi) other appropriate charges.

(5) Payments are due within 30 days after the invoice date.

(6) Late payments accrue interest at the most recent assumed actuarial rate of return on investments of the fund.

(7) Electronic Transfer of Funds

(A) In this section:

(i) The term "ACH" (Automated Clearing House) means the legal framework of rules and operational procedures adopted by financial institutions for the electronic transfer of funds.

(ii) The term "ACH Credit" means an ACH transaction initiated by a governing entity for the electronic transfer of funds

from the account of a governing entity to the account of the retirement system.

(iii) The term "ACH Debit" means an ACH transaction initiated by the retirement system for the electronic transfer of funds from the account of a governing entity to the account of the retirement system.

(iv) The term "electronic transfer of funds" means the transfer of funds, other than by check, draft or similar paper instrument, that is initiated electronically to order, instruct, or authorize a financial institution to debit or to credit an account.

(v) The term "pre-authorized direct debit" means the method available to a participating department for electronically paying required contributions by granting a continuing authorization to the retirement system to initiate an ACH Debit each month for the electronic transfer of funds from the designated bank account of the participating department to the account of the retirement system in an amount equal to the contributions required to be paid based on the certified department membership roster as filed.

(vi) The term "wire transfer" generally means a single transaction, initiated by a governing entity, in which funds are electronically transferred to the account of the retirement system using the Federal Reserve Banking System rather than the ACH.

(B) Quarterly amounts required to be contributed to the retirement system may be made by pre-authorized direct debits (ACH Debits). ACH Credits and wire transfers may not be used to transfer funds to the retirement system.

(C) A department may elect to use the pre-authorized direct debit method of payment by filing a signed authorization agreement with the retirement system in which the governing entity has designated a single bank account from which all transfers will be made.

(D) The authorization agreement entered into for this purpose constitutes continuing authority for the retirement system to initiate a direct debit of the department's designated bank account each quarter.

(E) An authorization agreement shall remain in effect until the retirement system receives either a written revocation of the agreement, or a subsequent written agreement, which automatically revokes the existing authorization. A new authorization agreement must be filed if there is any change in the designated bank account. The retirement system, in its sole discretion, may terminate the authorization agreement by mailing written notice to the participating department. Thereafter, the participating department must remit all contributions by check.

(F) The retirement system will initiate an ACH Debit in the amount required to be contributed for that quarter based upon the quarterly invoice, however the actual transfer of funds from the governing entity's designated account will not occur prior to the due date of the invoice.

(G) An ACH Debit that fails because sufficient funds are not available for transfer constitutes non-payment of the required contributions with respect to that quarterly invoice. A department failing to remit the required contributions by the due date of the invoice is subject to a penalty for late reporting.

(b) Annual Reports.

(1) Annual report forms are mailed by the Commissioner in December of each year.

(2) Annual reports are based on a calendar year in all cases.

(3) The reports are due in the Office of the Fire Fighters' Pension Commissioner by January 31.

(4) The guidelines accompanying the report forms should be followed by the local pension board.

(5) Administrative Penalties for late departmental annual report. An annual report is deemed late if the complete report is not received in the office of the Commissioner before April 1.

(A) The initial penalty is \$500 (five hundred dollars) for the first violation.

(B) A penalty of \$100 (one hundred dollars) will be added to the initial penalty for every 30 days the report is late.

(6) The Commissioner may waive penalties when a local board demonstrates that the delay in submission was beyond the control of the local entities responsible for preparing and submitting the report.

(A) Requests for waivers of the late annual report penalty must be in writing to the Commissioner.

(B) The local board must demonstrate that the delay was beyond the control of the entities responsible for preparing and submitting the report, and was not the result of neglect, indifference, or lack of diligence.

(C) If the Commissioner denies a waiver, the Commissioner must present the department's documentation to the State Board of Trustees at its next scheduled meeting for a determination by the State Board.

(D) A local board whose waiver of the penalty is denied by the State Board of Trustees shall have 60 days from the receipt of the denial of waiver to request that the Commissioner schedule a contested case hearing with the State Office of Administrative Hearings (SOAH). The request from the local board shall be in writing.

(7) The Commissioner shall withhold an individual's pension payments when a local board cannot verify a recipient's eligibility to receive payments due to the recipient's failure to cooperate or to provide information. The chairman of the local board must make the request to withhold payments to the Commissioner in writing. The request shall outline the attempts the board has made to obtain this information. The Commissioner shall make a decision and shall notify the recipient in writing of the decision.

(8) The Commissioner shall not begin retirement annuity, disability, or death payments based on the service of a person in departments whose service information has not been updated by the latest annual report.

(9) When correcting prior years of service on an annual report for a member of the TSESRA (Senate Bill 411) system, the chairman, the current chief or head of department, and the secretary of the local board shall sign and have notarized a letter to the Commissioner correcting the service record. This letter shall be accompanied by a copy of the minutes of the local board of trustees showing that they voted to make the change.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 28, 2004.

TRD-200407506

Melissa Juarez

Legal Counsel

Office of the Fire Fighters' Pension Commissioner

Effective date: January 17, 2005

Proposal publication date: November 5, 2004

For further information, please call: (512) 463-3372

## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 7. TEXAS COUNCIL ON PURCHASING FROM PEOPLE WITH DISABILITIES**

#### **CHAPTER 189. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES**

##### **40 TAC §189.13**

The Texas Council on Purchasing from People with Disabilities adopts new §189.13, concerning recognition and approval of Community Rehabilitation Programs, products, and services. Section 189.13 is adopted with no changes to the proposed text as published in the July 30, 2004, issue of the *Texas Register* (29 TexReg 7288).

The language in new §189.13 was previously located in §189.6, but needed to be placed in a separate section for administrative clarification.

The Texas Council on Purchasing from People with Disabilities adopts new §189.13 to achieve administrative convenience and clarification of the language. The new section allows Community Rehabilitation Programs to better understand the criteria they are expected to meet.

The public comment period ended August 30, 2004. No public comments were received.

The new section is adopted under the authority of the Texas Human Resource Code, Title 8, Chapter 122, §122.003 and §122.013

The following section is affected by the adoption: §122.019

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 27, 2004.

TRD-200407502

Margaret Pfluger

Chairman

Texas Council on Purchasing from People with Disabilities

Effective date: January 16, 2005

Proposal publication date: July 30, 2004

For further information, please call: (512) 463-3244



# TEXAS DEPARTMENT OF INSURANCE

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## Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30<sup>th</sup> day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10<sup>th</sup> day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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### Texas Department of Insurance

#### Final Action on Rules

#### EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF AMENDMENTS TO THE TEXAS AUTOMOBILE RULES AND RATING MANUAL, RULE 141, RENTAL CAR COMPANIES

The Commissioner of Insurance adopts amendments proposed by staff to the Texas Automobile Rules and Rating Manual (the Manual), Rule 141, Rental Car Companies. Staff's petition (Ref. No. A-1104-21-I) was published in the November 19, 2004 issue of the *Texas Register* (29 TexReg 10783).

Manual Rule 141 Subsection A, "Eligibility," is amended to restate that this rule applies to automobile rental liability insurance that is issued on the Texas Automobile Rental Liability Policy and the Texas Automobile Rental Liability Excess Policy.

Manual Rule 141 Subsection E, "Required Disclosures," is also amended to revise the language that informs a prospective buyer of rental liability insurance in a rental car transaction that he or she may already have an insurance policy that duplicates the coverage that would be provided by an automobile rental liability insurance policy. Subsection E is revised to delete the portion of the disclosure which states, "Your Texas automobile policy provides coverage for your liability while renting a rental vehicle. Automobile policies issued

in other states or countries may also duplicate this coverage." The deleted language is replaced with "Your personal automobile insurance policy may provide coverage for your liability while operating a rental vehicle."

All amendments to Rule 141 are in compliance with Insurance Code Article 21.09, which became effective September 1, 1999.

The amendments as adopted by the Commissioner of Insurance are shown in a revised exhibit on file with the Chief Clerk under Ref. No. A-1104-21-I, which is incorporated by reference into Commissioner's Order No. 05-0006.

The Commissioner of Insurance has jurisdiction over this matter pursuant to Insurance Code Articles 5.10, 5.13-2, 5.96, 5.98, 5.101, 21.09 and 36.001. IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted to become effective on the 15th day after publication of the notification of the Commissioner's action in the *Texas Register*.

TRD-200500038

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: January 5, 2005

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# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Review

General Land Office

### Title 31, Part 1

The Texas General Land Office (GLO) files this notice and proposes the readoption of 31 TAC Part 1, Chapter 13 relating to Land Resources. This review of Chapter 13 is filed in accordance with the General Land Office's Rule Review Plan published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9697).

This notice of proposed readoption of 31 TAC, Part 1, Chapter 13: Land Resources applies to the chapter in its entirety.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, *Texas Register* Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to [walter.talley@glo.state.tx.us](mailto:walter.talley@glo.state.tx.us). Written comments must be received no later than thirty (30) days from the date of publication of this notice.

TRD-200500049

Trace Finley

Policy Director

General Land Office

Filed: January 5, 2005

## Adopted Rule Reviews

Texas Workforce Commission

### Title 40, Part 20

The Texas Workforce Commission (Commission) adopts the review of Chapter 800, General Administration, in accordance with Texas Government Code §2001.039. The proposed review was published in the October 8, 2004, issue of the *Texas Register* (29 TexReg 9561).

No comments were received on the notice of intention to review.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 800 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 800, General Administration.

The rule review is adopted under Texas Labor Code §301.0015, §302.002(d) and §2001.039(c), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules

as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308.

For information about the Commission, please visit our web page at [www.twc.state.tx.us](http://www.twc.state.tx.us).

TRD-200500006

John Moore

General Counsel

Texas Workforce Commission

Filed: January 3, 2005

The Texas Workforce Commission (Commission) adopts the review of Chapter 801, Local Workforce Development Boards, in accordance with Texas Government Code §2001.039. The proposed review was published in the October 8, 2004, issue of the *Texas Register* (29 TexReg 9561).

No comments were received on the proposed notice of intention to review.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 801 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 801, Local Workforce Development Boards.

The rule review is adopted under Texas Labor Code §301.0015, §302.002(d) and §2001.039(c), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308.

For information about the Commission, please visit our web page at [www.twc.state.tx.us](http://www.twc.state.tx.us).

TRD-200500005

John Moore

General Counsel

Texas Workforce Commission

Filed: January 3, 2005

The Texas Workforce Commission (Commission) adopts the review of Chapter 819, Texas Workforce Commission--Civil Rights Division, in accordance with Texas Government Code §2001.039. The proposed review was published in the October 8, 2004, issue of the *Texas Register* (29 TexReg 9562).

No comments were received on the proposed notice of intention to review.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 819 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 819, Texas Workforce Commission - Civil Rights Division.

The rule review is adopted under Texas Labor Code §301.0015, §302.002(d) and §2001.039(c), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308.

For information about the Commission, please visit our web page at [www.twc.state.tx.us](http://www.twc.state.tx.us).

TRD-200500004  
John Moore  
General Counsel  
Texas Workforce Commission  
Filed: January 3, 2005



The Texas Workforce Commission (Commission) adopts the review of Chapter 835, Self-Sufficiency Fund, in accordance with Texas Government Code §2001.039. The proposed review was published in the October 8, 2004, issue of the *Texas Register* (29 TexReg 9562).

No comments were received on the proposed notice of intention to review.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 835 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 835, Self-Sufficiency Fund.

The rule review is adopted under Texas Labor Code §301.0015, §302.002(d) and §2001.039(c), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The rules affect Texas Labor Code, Titles 2 and 4 as well as Texas Government Code Chapter 2308.

For information about the Commission, please visit our web page at [www.twc.state.tx.us](http://www.twc.state.tx.us).

TRD-200500003  
John Moore  
General Counsel  
Texas Workforce Commission  
Filed: January 3, 2005



# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 22 TAC §51.3(b)

## **PENALTIES FOR PRACTICE AND PROCEDURES VIOLATIONS**

### **CATEGORY I**

#### **Not To Exceed The Following Amounts**

**1st: \$750**

**2nd: \$850**

**3rd: \$1000**

#### **Violation**

#### **Reference**

Unlicensed Barber School

TEX. OCC. CODE ANN. §1601.351

Enrolling Prior to Approval

TEX. OCC. CODE ANN. §1601.356

Unapproved Location Change

TEX. OCC. CODE ANN. §1601.554

### **CATEGORY II**

#### **Not To Exceed The Following Amounts**

**1st: \$500**

**2nd: \$750**

**3rd: \$1000**

#### **Violation**

#### **Reference**

Registered Name/Location

TEX. OCC. CODE ANN. §1601.301

Certificate, License or Permit Required

TEX. OCC. CODE ANN. §1601.251

Unlicensed Barber Shop

TEX. OCC. CODE ANN. §1601.301

Unlawful Health Certificate

TEX. OCC. CODE ANN. §1601.701

Footspa Sanitation

TEX. OCC. CODE ANN. §1601.152

### **CATEGORY III**

#### **Not To Exceed The Following Amounts**

**1st: \$500**

**2nd: \$750**

**3rd: \$1000**

#### **Violation**

#### **Reference**

Barber Tech Practicing Out of Scope

TEX. OCC. CODE ANN. §1601.256

Manicurist Practicing Out of Scope

TEX. OCC. CODE ANN. §1601.257

Unlicensed Manicure Shop

TEX. OCC. CODE ANN. §1601.304

Gross Malpractice

TEX. OCC. CODE ANN. §1601.601

Knowingly Contagious Disease

TEX. OCC. CODE ANN. §1601.601

Employing Unlicensed Person

TEX. OCC. CODE ANN. §1601.701

Allowing Unlicensed Independent Contractor  
or Other Person to Engage in Barbering

TEX. OCC. CODE ANN. §1601.701  
and 22 TAC §51.91

Obtaining License by Fraud

TEX. OCC. CODE ANN. §1601.701

Misrepresent Enrollment

TEX. OCC. CODE ANN. §1601.562

#### **CATEGORY IV**

##### **Not To Exceed The Following Amounts**

**1st: \$300**

**2nd: \$500**

**3rd: \$750**

##### **Violation**

##### **Reference**

Sleeping Quarters

TEX. OCC. CODE ANN. §1601.507

False Advertisement "Barbering"

TEX. OCC. CODE ANN. §1601.251

False Advertisement "Barber Pole"

TEX. OCC. CODE ANN. §1601.251

False Statement

TEX. OCC. CODE ANN. §1601.252

False Advertisement

TEX. OCC. CODE ANN. §1601.601

Practicing Under Wrong Name

TEX. OCC. CODE ANN. §1601.601

Refresher Course

TEX. OCC. CODE ANN. §1601.354

Theory Taught

TEX. OCC. CODE ANN. §1601.558

Teacher on Duty

TEX. OCC. CODE ANN. §1601.560

Qualified Instructor

TEX. OCC. CODE ANN. §1601.560

Teacher Instructor Ratio

TEX. OCC. CODE ANN. §1601.560

School Change of Ownership

TEX. OCC. CODE ANN. §1601.554

Increase/Decrease Hours

TEX. OCC. CODE ANN. §1601.558(d)

#### **CATEGORY V**

##### **Not To Exceed The Following Amounts**

**1st: \$200**

**2nd: \$400**

**3rd: \$500**

##### **Violation**

##### **Reference**

Stop Blood Flow

TEX. OCC. CODE ANN. §1601.506

**CATEGORY VIA****Not To Exceed The Following Amounts****1st: \$100****2nd: \$300****3rd: \$500****Violation****Reference**

Employee with Disease

TEX. OCC. CODE ANN. §1601.505

Expired License

TEX. OCC. CODE ANN. §1601.402

Allowing Employee or Independent Contractor  
to Engage in Barbering with Expired LicenseTEX. OCC. CODE ANN §1601.701  
and 22 TAC §51.91

Unlawful Transfer

TEX. OCC. CODE ANN. §1601.308

Proof of Requisites

TEX. OCC. CODE ANN. §1601.252

Employing Cosmetologist

TEX. OCC. CODE ANN. §1601.309

Expired Permit

TEX. OCC. CODE ANN. §1601.408

Allowing Independent Contractor to Engage in  
Barbering with an Expired Booth Rental PermitTEX. OCC. CODE ANN §1601.701  
and 22 TAC §51.91

Location Change

TEX. OCC. CODE ANN. §1601.310

School Owner Working Chair

TEX. OCC. CODE ANN. §1601.701

School Owner Permitting A Person Other Than  
A Student To Work Chair

TEX. OCC. CODE ANN. §1601.701

**CATEGORY VIB****Not To Exceed The Following Amounts****1st: \$100****2nd: \$300****3rd: \$500****Violation****Reference**

Liquid Sterilizer

TEX. OCC. CODE ANN. §1601.353

Barber School Sign

TEX. OCC. CODE ANN. §1601.553

Expired School License

TEX. OCC. CODE ANN. §1601.407

Course Outline

TEX. OCC. CODE ANN. §1601.556

Student Information

TEX. OCC. CODE ANN. §1601.556

Curriculum Content

TEX. OCC. CODE ANN. §1601.557

Student Cancellation

TEX. OCC. CODE ANN. §1601.562

Violation of Refund Policy

TEX. OCC. CODE ANN. §1601.563

Violate Termination Ratio

TEX. OCC. CODE ANN. §1601.564

|                     |                               |
|---------------------|-------------------------------|
| Student Re-Entry    | TEX. OCC. CODE ANN. §1601.564 |
| Timely Refund       | TEX. OCC. CODE ANN. §1601.566 |
| Interest Paid       | TEX. OCC. CODE ANN. §1601.566 |
| Incomplete/Re-Entry | TEX. OCC. CODE ANN. §1601.565 |

## **CATEGORY VIC**

### **Not To Exceed The Following Amounts**

| <b>1st: \$100</b>                          | <b>2nd: \$200</b>                              | <b>3rd: \$300</b> |
|--|--|-------------------|
| <b>Violation</b>                           | <b>Reference</b>                               |                   |
| Practice Unlicensed Facility               | TEX. OCC. CODE ANN. §1601.453                  |                   |
| Cosmetologist Practicing in Barber Shop    | TEX. OCC. CODE ANN. §1601.502                  |                   |
| Equipment                                  | TEX. OCC. CODE ANN. §1601.504                  |                   |
| Combs, Brushes                             | TEX. OCC. CODE ANN. §1601.506                  |                   |
| Sterilize Razor, Shears Clippers, Tweezers | TEX. OCC. CODE ANN. §1601.506                  |                   |
| Shave Inflamed Area                        | TEX. OCC. CODE ANN. §1601.506                  |                   |
| Dirty Finger Bowl                          | TEX. OCC. CODE ANN. §1601.506                  |                   |
| Unlawful Location Change                   | TEX. OCC. CODE ANN. §1601.503                  |                   |
| 16 Years Old                               | TEX. OCC. CODE ANN. §1601.253<br>and §1601.701 |                   |

## **CATEGORY VID**

### **Not To Exceed The Following Amounts**

| <b>1st: \$50</b>              | <b>2nd: \$100</b>             | <b>3rd: \$150</b> |
|-------------------------------|-------------------------------|-------------------|
| <b>Violation</b>              | <b>Reference</b>              |                   |
| Failure to Display            | TEX. OCC. CODE ANN. §1601.701 |                   |
| Display of Consumer Complaint | TEX. OCC. CODE ANN. §1601.202 |                   |
| Unlaundered Towel             | TEX. OCC. CODE ANN. §1601.506 |                   |
| Dirty Head Rest               | TEX. OCC. CODE ANN. §1601.506 |                   |
| Dirty Sponge                  | TEX. OCC. CODE ANN. §1601.506 |                   |
| No Neck Strip                 | TEX. OCC. CODE ANN. §1601.506 |                   |
| Failure to Display            | TEX. OCC. CODE ANN. §1601.451 |                   |



**CATEGORY VIIA****Not To Exceed The Following Amounts****1st: \$250****2nd: \$500****3rd: \$1000****Violation****Reference**

All Furniture and Equipment

TEX. OCC. CODE ANN. §1601.506

**CATEGORY VIIB****Not To Exceed The Following Amounts****1st: Warning****2nd: \$100****3rd: \$150****Violation****Reference**

Manager on Duty

TEX. OCC. CODE ANN. §1601.502

Improper Curriculum

TEX. OCC. CODE ANN. §1601.354

Theory/Practical Instruction

TEX. OCC. CODE ANN. §1601.558

2800 Square Feet

TEX. OCC. CODE ANN. §1601.353

Twenty Chairs

TEX. OCC. CODE ANN. §1601.353

**CATEGORY VIIC****Not To Exceed The Following Amounts****1st: Warning****2nd: \$100****3rd: \$200****Violation****Reference**

Shop Permit on Display

TEX. OCC. CODE ANN. §1601.501

Classroom Requirements

TEX. OCC. CODE ANN. §1601.353

Library Facilities

TEX. OCC. CODE ANN. §1601.353

Drinking Fountain

TEX. OCC. CODE ANN. §1601.353

Fire Fighting Equipment

TEX. OCC. CODE ANN. §1601.353

Student Requirements

TEX. OCC. CODE ANN. §1601.260

Progress Reports

TEX. OCC. CODE ANN. §1601.561

Completion Rates

TEX. OCC. CODE ANN. §1601.561

Job Placement

TEX. OCC. CODE ANN. §1601.561

Lighting

TEX. OCC. CODE ANN. §1601.353

**CATEGORY VIID****Not To Exceed The Following Amounts****1st: Warning****2nd: \$50****3rd: \$100****Violation**

Adequate Latherizers

**Reference**

TEX. OCC. CODE ANN. §1601.353

**CATEGORY VIIE****Not To Exceed The Following Amounts****1st: \$50****2nd: \$100****3rd: \$150****Violation**

One Lavatory (Sink) per two chairs

**Reference**

TEX. OCC. CODE ANN. §1601.353

**CATEGORY VIIF****Not To Exceed The Following Amounts****1st: \$50****2nd: \$100****3rd: \$200****Violation**

Hard Surface Floor

**Reference**

TEX. OCC. CODE ANN. §1601.353

## **GENERAL RULES OF PRACTICE AND PRACEDURES**

### **CATEGORY I**

#### **Not To Exceed The Following Amounts**

|                   |                   |                    |
|-------------------|-------------------|--------------------|
| <b>1st: \$750</b> | <b>2nd: \$850</b> | <b>3rd: \$1000</b> |
|-------------------|-------------------|--------------------|

### **CATEGORY II**

#### **Not To Exceed The Following Amounts**

|                   |                   |                    |
|-------------------|-------------------|--------------------|
| <b>1st: \$500</b> | <b>2nd: \$750</b> | <b>3rd: \$1000</b> |
|-------------------|-------------------|--------------------|

|                  |                  |
|------------------|------------------|
| <b>Violation</b> | <b>Reference</b> |
|------------------|------------------|

|                 |       |
|-----------------|-------|
| Right of Access | §51.6 |
|-----------------|-------|

### **CATEGORY III**

#### **Not To Exceed The Following Amounts**

|                   |                   |                   |
|-------------------|-------------------|-------------------|
| <b>1st: \$300</b> | <b>2nd: \$500</b> | <b>3rd: \$750</b> |
|-------------------|-------------------|-------------------|

|                  |                  |
|------------------|------------------|
| <b>Violation</b> | <b>Reference</b> |
|------------------|------------------|

|                                      |         |
|--------------------------------------|---------|
| Barber Advertisements (Yellow Pages) | §51.101 |
|--------------------------------------|---------|

### **CATEGORY IV**

#### **Not To Exceed The Following Amounts**

|                   |                   |                   |
|-------------------|-------------------|-------------------|
| <b>1st: \$200</b> | <b>2nd: \$400</b> | <b>3rd: \$500</b> |
|-------------------|-------------------|-------------------|

### **CATEGORY VA**

#### **Not To Exceed The Following Amounts**

|                   |                   |                   |
|-------------------|-------------------|-------------------|
| <b>1st: \$100</b> | <b>2nd: \$300</b> | <b>3rd: \$500</b> |
|-------------------|-------------------|-------------------|

### **CATEGORY VB**

#### **Not To Exceed The Following Amounts**

|                   |                   |                   |
|-------------------|-------------------|-------------------|
| <b>1st: \$100</b> | <b>2nd: \$200</b> | <b>3rd: \$300</b> |
|-------------------|-------------------|-------------------|

|                  |                  |
|------------------|------------------|
| <b>Violation</b> | <b>Reference</b> |
|------------------|------------------|

|                    |        |
|--------------------|--------|
| Animals Prohibited | §51.96 |
|--------------------|--------|

**CATEGORY VC****Not To Exceed The Following Amounts**

1st: \$50                                      2nd: \$100                                      3rd: \$150

| Violation | Reference |
|-----------|-----------|
|-----------|-----------|

|                 |       |
|-----------------|-------|
| Current Address | §51.4 |
|-----------------|-------|

**CATEGORY VIA****Not To Exceed The Following Amounts**

1st: Warning                                      2nd: \$500                                      3rd: \$1000

**CATEGORY VIB****Not To Exceed The Following Amounts**

1st: Warning                                      2nd: \$300                                      3rd: \$500

| Violation | Reference |
|-----------|-----------|
|-----------|-----------|

|                              |        |
|------------------------------|--------|
| Barber School Business Hours | §51.14 |
|------------------------------|--------|

|   |        |
|---|--------|
| Other Business Prohibited (School or College) | §51.40 |
|---|--------|

|              |        |
|--------------|--------|
| Booth Rental | §51.97 |
|--------------|--------|

**CATEGORY VIC****Not To Exceed The Following Amounts**

1st: Warning                                      2nd: \$100                                      3rd: \$200

| Violation | Reference |
|-----------|-----------|
|-----------|-----------|

|                   |        |
|-------------------|--------|
| Student Equipment | §51.16 |
|-------------------|--------|

|            |        |
|------------|--------|
| Dress Code | §51.94 |
|------------|--------|

**CATEGORY VID****Not To Exceed The Following Amounts**

1st: Warning                                      2nd: \$50                                      3rd: \$100

| Violation | Reference |
|-----------|-----------|
|-----------|-----------|

|                       |        |
|-----------------------|--------|
| Student Certification | §51.23 |
|-----------------------|--------|

**CATEGORY VIE**

**Not To Exceed The Following Amounts**

**1st: \$25**

**2nd: \$50**

**3rd: \$100**

**Violation**

**Reference**

Other Business Prohibited (Shop)

§53.95

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

### Agreed Final Judgment and Permanent Injunction

The State of Texas hereby gives notice of the proposed resolution of an environmental enforcement lawsuit brought pursuant to the Texas Solid Waste Disposal Act and the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Law.

Case Title and Court: *The State of Texas v. Pharr Plantation, Inc., Pharr Plantation Development Company, Ltd., and Heblen Kanan*, Cause No. GV2-04348 in the 261st District Court of Travis County, Texas.

Nature of Suit: This is a suit for enforcement of an agreed administrative order of the Texas Commission on Environmental Quality concerning hazardous wastes at a former crop-dusting air field in Pharr, Texas (the "Site"). The Defendants are Pharr Plantation, the owner of the Site, Pharr Plantation Development, a land developer operating on the Site, and Heblen Kanan, the president and majority owner of the two companies.

Proposed Agreed Judgment: The proposed Agreed Final Judgment and Permanent Injunction settles all of the State's claims in the suit. The Agreed Final Judgment and Permanent Injunction contains provisions for injunctive relief, civil penalties, and attorney's fees. The proposed judgment will enjoin the defendants to conduct an investigation and, if necessary, to remediate the Site. The defendants will also be enjoined to remove an underground storage tank. The judgment awards the State \$21,000 in civil penalties, \$28,600 in deferred administrative penalties, and \$21,000 in attorney's fees.

The Office of the Attorney General will accept written comments relating to this proposed judgment for thirty (30) days from the date of the publication of this notice. Copies of the proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment and written comments on the proposed judgment should be directed to Jane E. Atwood, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052.

For information regarding this publication you may contact A.G. Younger, Agency Liaison at (512) 463-2110.

TRD-200500024

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: January 4, 2005

## Texas Building and Procurement Commission

### Request for Proposal

TBPC Project No. 04-006-7646

Project Name: William P. Clements Building Exterior Wall Renovation, 300 West 15th Street, Austin, Texas 78701, for the Office of the Attorney General.

Sealed Bids for this project will be received until 3:00 P.M., Monday, January 31, 2005, at the 4th Floor Reception, 1711 San Jacinto, Austin, TX 78701. See the RFP for other delivery choices.

Plans and specifications may be obtained from the A/E, MACTEC 5500 Guhn Road, Houston, Texas 77040 (P) (713) 939-8444, (F) (713) 462-1653, for a deposit of \$50.00 per set, refundable upon return of a complete, unmarked set(s) or non-refundable purchase from Ridgeway's in Austin or Houston.

A Mandatory Pre-Bid Conference will be held at William P. Clements Building (Room 103), 300 West 15th Street, Austin, Texas 78701, at 10:30 a.m., Wednesday, January 19, 2005. Only proposals submitted on the official Contractor's Bid Form found in the Project Manual will be accepted.

The RFP may be obtained by contacting TBPC Internal Procurement, Attn: Kenneth Ming (F) (512) 463-3360, [kenneth.ming@tbpc.state.tx.us](mailto:kenneth.ming@tbpc.state.tx.us) or through the Electronic State Business Daily at: <http://esbd.tbpc.state.tx.us/> Then enter the Agency Req. No. "303-5-10174A" in the blank provided and click FIND.

TRD-200407528

Mark Gentle

Legal Counsel

Texas Building and Procurement Commission

Filed: December 30, 2004

## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of December 23, 2004, through December 30, 2004. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on December 29, 2004. The public comment period for these projects will close at 5:00 p.m. on January 28, 2005.

## FEDERAL AGENCY ACTIONS:

**Applicant: TMR Exploration, Inc.;** Location: The project is located in the Galveston West Bay State Tract 21 S/2, approximately 14 miles southwest of Hitchcock, Texas, in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Hoskins Mound, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 293,034.862; Northing: 3,229,547.463. Project Description: The applicant has changed the location of the proposed placement area for the dredge material in response to comments from the public noticed dated 15 October 2004. The materials from this channel would be piped to a beneficial use area along the south shore of the bay and on the north side of Alligator Point. The applicant still proposes to drill and maintain wells in State Tract 21, Galveston West Bay, install a production platform, install well guards, and lay flow lines (not sales lines) for the production of oil and gas. The water depth at the proposed site is 5 feet. The bay bottom of the proposed well location is soft mud and no oysters or shell reefs exist within a 500-foot radius. The applicant still proposes to hydraulically dredge a channel approximately 80 feet wide, 3 feet deep and approximately 3,069 feet long to connect to a 200-foot by 250-foot basin at a proposed well site. The basin would also be dredged approximately 3 feet deep. CCC Project No.: 05-0077-F1; Type of Application: U.S.A.C.E. permit application #23465 (2nd Revision) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

**Applicant: R. B. and Yvonne Darrell;** Location: The project is located along Caney Creek in Caney Creek Haven Subdivision Lots 11 and 12, Block 1, Section 4, in Sargent, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Sargent, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 241172; Northing: 3188288. Project Description: The applicant proposes to place fill into 0.0006 acre of wetlands during the construction of 100 linear feet of bulkhead across the front of their property. The applicant proposes to tie into the adjacent property owner's bulkhead. Approximately 30 square feet (0.0006 acre) of phragmites would be filled in during construction. CCC Project No.: 05-0079-F1; Type of Application: U.S.A.C.E. permit application #23625 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Lynn Watkins;** Location: The project is located at along the Gulf Intracoastal Waterway (GIWW) approximately 1.4 miles

west of Port O'Connor about 100 feet west of Scurlock Road in Port O'Connor in Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port O'Connor, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 751104; Northing: 3147425. The proposed mitigation site can be located on the U.S.G.S. quadrangle map titled: Kamey, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 729206; Northing: 3175193. Project Description: The applicant proposes to construct a 2.54-acre development along the GIWW. The development consists of bulkheading 471 feet of waterfront, dredging approximately 2,901 cubic yards of material from in front of the bulkhead to provide boat access to the lots and the construction of piers and boathouses for the associated lots. The dredge material will be placed onsite to fill approximately 0.36 acre of jurisdictional wetlands and bring the lots up to grade suitable for single family residential construction. The project proposes to offset impacts to jurisdictional waters of the United States and adjacent wetlands by excavating 0.43 acres of uplands to create a Spartina marsh with a circulation channel and tidal pools. CCC Project No.: 05-0090-F1; Type of Application: U.S.A.C.E. permit application #23593 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Gwen Spriggs, Council Administrative Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or [gwen.spriggs@glo.state.tx.us](mailto:gwen.spriggs@glo.state.tx.us). Comments should be sent to Ms. Spriggs at the above address or by fax at (512) 475-0680.

TRD-200500046

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office  
Coastal Coordination Council

Filed: January 5, 2005

## Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective January 1, 2005

A 1 1/4% local sales and use tax that includes the 1% city sales tax and an additional 1/4% city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective January 1, 2005 in the city listed below.

| <u>CITY NAME</u>          | <u>LOCAL CODE</u> | <u>NEW RATE</u> | <u>TOTAL RATE</u> |
|---------------------------|-------------------|-----------------|-------------------|
| East Bernard (Wharton Co) | 2241081           | .012500         | .080000           |

An additional 1/4% city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective January 1, 2005 in the cities listed below.

| <u>CITY NAME</u>    | <u>LOCAL CODE</u> | <u>LOCAL RATE</u> | <u>TOTAL RATE</u> |
|---------------------|-------------------|-------------------|-------------------|
| Corinth (Denton Co) | 2061122           | .017500           | .082500           |
| Cumby (Hopkins Co)  | 2112023           | .012500           | .080000           |

The additional 1/2% sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section 4A was abolished and the adoption of an additional 1/2% sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section 4B will become effective January 1, 2005 in the city listed below. There will be no change in the local rate or total rate.

| <u>CITY NAME</u>  | <u>LOCAL CODE</u> | <u>LOCAL RATE</u> | <u>TOTAL RATE</u> |
|-------------------|-------------------|-------------------|-------------------|
| Kemp (Kaufman Co) | 2129033           | .015000           | .077500           |

A 1/4% special purpose district sales and use tax will become effective January 1, 2005 in the special purpose districts listed below.

| <u>SPD NAME</u>                                 | <u>LOCAL CODE</u> | <u>NEW RATE</u> | <u>TOTAL RATE</u> |
|---|-------------------|-----------------|-------------------|
| Corinth Crime Control and Prevention District   | 5061569           | .002500         | SEE NOTE 1        |
| Windcrest Crime Control and Prevention District | 5015548           | .002500         | SEE NOTE 2        |

A 1/2% special purpose district sales and use tax will become effective January 1, 2005 in the special purpose districts listed below.

| <u>SPD NAME</u>                                     | <u>LOCAL CODE</u> | <u>NEW RATE</u> | <u>TOTAL RATE</u> |
|---|-------------------|-----------------|-------------------|
| Montgomery County Emergency Services District No. 6 | 5170567           | .005000         | SEE NOTE 3        |
| Montgomery County Emergency Services District No. 7 | 5170576           | .005000         | SEE NOTE 4        |
| Morgan's Point Municipal Development District       | 5101561           | .005000         | SEE NOTE 5        |



A 3/4% special purpose district sales and use tax will become effective January 1, 2005 in the special purpose district listed below.

| <u>SPD NAME</u>                  | <u>LOCAL CODE</u> | <u>NEW RATE</u> | <u>TOTAL RATE</u> |
|----------------------------------|-------------------|-----------------|-------------------|
| Winnie-Stowell Hospital District | 5036525           | .007500         | SEE NOTE 6        |

NOTE 1: The boundaries of the Corinth Crime Control and Prevention District are the same boundaries as the City of Corinth. The total rate in the City of Corinth will be .082500.

NOTE 2: The boundaries of the Windcrest Crime Control and Prevention District are the same boundaries as the City of Windcrest. The total rate in the City of Windcrest will be .082500.

NOTE 3: The Montgomery County Emergency Services District No.6 is located in the southeastern portion of Montgomery County. Montgomery County Emergency Services District No.6 is partially located within the East Montgomery County Improvement District, which has a special purpose district sales and use tax. The unincorporated areas of Montgomery County in zip codes 77339, 77357 and 77365 are partially located within the Montgomery County Emergency Services District No.6. Contact the district representative at 281/354-2429 for additional boundary information.

NOTE 4: The Montgomery County Emergency Services District No.7 is located in the southeastern portion of Montgomery County. Montgomery County Emergency Services District No.7 is partially located within the East Montgomery County Improvement District, which has a special purpose district sales and use tax. The unincorporated areas of Montgomery County in zip codes 77302, 77357 and 77365 are partially located within the Montgomery County Emergency Services District No.7. Contact the district representative at 713/542-4062 for additional boundary information.

NOTE 5: The boundaries of the Morgan's Point Municipal Development District is the portion of the City of Morgan's Point located within Harris County. The district does **not** include any area of the City of Morgan's Point within Chambers County. The total tax rate in the Harris County portion of Morgan's Point will be .082500. Contact the City of Morgan's Point at 281/471-2171 for additional boundary information.

NOTE 6: The Winnie-Stowell Hospital District is located in the eastern portion of Chambers County. Chambers County also has a countywide special purpose district sales and use tax to provide revenue for health services in the county. The unincorporated areas of Chambers County in zip codes 77661 and 77665 are partially located within the Winnie-Stowell Hospital District. Contact the district representative at 409-267-3143 for additional boundary information.

TRD-200500001  
Martin Cherry  
Chief Deputy General Counsel  
Comptroller of Public Accounts  
Filed: January 2, 2005



#### Notice of Request for Information

Pursuant to Chapters 2305 and 403, Texas Government Code, the Office of the Comptroller of Public Accounts (Comptroller), on behalf of the State Energy Conservation Office (SECO) Housing Partnership Program (HPP), issues this Request for Information (RFI #170e) from

interested political subdivisions to obtain input into a design or ideas for the Housing Partnership Project (Project). SECO requests information from the foregoing entities that would be interested in submission of information to SECO to assist in a potential pilot Project, specifically, the design, installation, and maintenance of energy efficient systems such as heating, ventilation, air conditioning, energy control systems, and insulation, as well as training, public outreach, and other activities for low-to-moderate income households in the state.

Contact: Entities interested in submitting information in response to this RFI should contact Mary-Jo Rowan, State Energy Conservation Office, Comptroller of Public Accounts, 111 East 17th Street, Room 1114, Austin, Texas 78774, telephone number: (512) 463-1931, no later than 5:00 p.m. Central Zone Time (CZT), on or before Tuesday,

February 15, 2005. All written inquiries and questions must be received at the location specified above, prior to 5:00 p.m. (CZT) on January 31, 2005, in order to be considered.

Responses: Comptroller and SECO reserve the right, in their sole judgment and discretion, to accept or reject any or all responses received. Responses received by the deadline will be subject to evaluation by Comptroller, SECO, and/or a committee and all responses shall become the property of SECO and Comptroller. Responses will be public information and available to any requester. Neither Comptroller nor SECO is under any legal or other obligation to issue any solicitation or execute a contract or make any selection or award on the basis of this notice or any responses received as a result of the issuance of this RFI. Neither SECO nor Comptroller shall pay for any costs incurred by any political subdivision or any other entity in responding to this RFI.

Closing Date: All responses to this RFI must be submitted to the address set forth above no later than 5:00 p.m. (CZT), on Tuesday, February 15, 2005. Respondents are solely responsible for ensuring timely receipt of all responses at the location set forth above on or before the deadline. Late responses received after this time and date will not be considered. All responses must be submitted in the format designed and provided by SECO. The RFI format is located on the SECO website--[http://www.seco.cpa.state.tx.us/seco\\_rfi.htm](http://www.seco.cpa.state.tx.us/seco_rfi.htm) or can be requested by telephone (800) 531-5441, EXT. 3-1931. Respondents must complete and submit all of the following in response to this RFI:

- \* Provide updated information on the creation, design, and installation of energy efficient systems, including energy management control systems, heating, ventilation, air conditioning, insulation, and other energy conservation measures, in low-to-moderate income housing;

- \* Provide information to SECO and Comptroller on a potential specific target audience(s) in a given geographical area(s) who could benefit by receiving such systems; as Optional Information, respondents may also choose to provide information on areas in the development and implementation of a community outreach program that describes the economics, environmental benefits, and reliability of energy efficiency and energy conservation-related technologies to enhance energy-awareness and further assist low-to-moderate income families;

- \* Provide input on the design and creation of effective, user-friendly, hands-on training materials, modules, and workshops to assist the recipients of the foregoing systems in the operation, care, and maintenance of the installed systems; and

- \* Any other information, such as funding arrangements, public-private partnerships, etc., respondent deems pertinent or relevant to this RFI.

TRD-200500050

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: January 5, 2005



#### Notice of Withdrawal of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and §403.011 and §403.3011, Texas Government Code; §5.102, Property Tax Code; and Chapter 271, Local Government Code, the Comptroller of Public Accounts (Comptroller) announces the withdrawal of its Request for Proposals (RFP #170a) for the conduct of Appraisal Standards Reviews.

Issuance Date: The RFP was issued on Friday, October 29, 2004, and was posted in the *Texas Register* on same date at 29 TexReg 10152.

No Proposals were received in response to the RFP. Comptroller is under no legal or other obligation to execute any contracts on the basis

of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

TRD-200500052

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: January 5, 2005



#### Office of Consumer Credit Commissioner

##### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 01/10/05 - 01/16/05 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 01/10/05 - 01/16/05 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-200500013

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: January 4, 2005



#### Office of Court Administration

##### Request for Comments Regarding Task Force on Indigent Defense Formula Grant Change Procedure and Timeline

**Background and Citations:** For two full years, the Task Force on Indigent Defense has collected from counties indigent defense expenditures data in accordance with the Texas Government Code §71.0351. During this time, some counties have questioned whether or not there is a better method to distribute state money to improve indigent defense services in Texas counties. For example, some counties have received reimbursement of all of increased indigent defense costs and others have received only a small fraction of their increased costs.

At its inception, the Task Force proposed the formula listed below as its primary means of funding to counties to improve local indigent defense systems and offset local indigent defense costs. In addition, when the Task Force proposed the formula, there was a recommendation that the formula be revisited after two years of data collection. The current formula is:

**Formula:** The Task Force distributes funds to counties through a formula that sets a \$5,000 floor per grant with the remainder based on a county's percent of population (2000 Census) multiplied by the Task Force's remaining budgeted amount for formula grant. Counties must meet minimum spending requirements to qualify.

**Process and Timeline:** The Task Force through its Grants and Reporting Committee requests that any interested persons submit comments concerning the current formula process that may better meet the needs of Texas counties within the bounds of the Task Forces' statutory authority

**Submitted comments must include the following information:**

1. Name and contact information of the person submitting the comment;
2. Entity, association, or county(ies) represented by the comment;
3. State whether comment is for or against changing the formula;
4. The reasoning behind the comment;

If proposing a change:

5. State clearly what the change should be;
6. State the impact the change will have on your entity, association, or county(ies);
7. Provide the source of any data used to calculate the proposed formula; and
8. Provide an example of the calculation using the suggested formula.

All proposed changes must be in writing. The Task Force has the authority under law to continue the current formula or change it as determined by the Task Force.

A sub-workgroup of the Task Force will be convened to review the results of public comments and identify possible workable formulas to be submitted to the Task Force consideration. Workable formula means that the data used to calculate the proposed formula is available for all Texas counties and that a result can be determined for all counties. The sub-workgroup will provide a written report of its findings at the next public meeting of the Grants and Reporting Committee of the Task Force.

Please send any proposed formula grant formula changes by February 5, 2005 to Bryan Wilson, P.O. Box 12066, Austin, Texas 78711. Comments may be faxed to 512-475-3450 or e-mailed to [bryan.wilson@courts.state.tx.us](mailto:bryan.wilson@courts.state.tx.us). For more information about the Task Force on Indigent Defense, please visit our website: [www.courts.state.tx.us/tfid](http://www.courts.state.tx.us/tfid). Please direct questions about this posting, the formula, or grant processes to 512-936-6994 or Toll Free at 866-499-0656.

**Deadline for comments: February 5, 2005**

The following statute provides the Task Force the authority to distribute funds:

Texas Government Code Sec. 71.062. TECHNICAL SUPPORT; GRANTS.

(a) The Task Force on Indigent Defense shall:

(1) provide technical support to:

- (A) assist counties in improving their indigent defense systems; and
- (B) promote compliance by counties with the requirements of state law relating to indigent defense;

(2) direct the comptroller to distribute funds, including grants, to counties to provide indigent defense services the county; and

(3) monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by directing the comptroller to:

- (A) withdraw grant funds; or
- (B) require reimbursement of grant funds by the county.

(b) The Task Force on Indigent Defense shall direct the comptroller to distribute funds as required by Subsection (a)(2) based on a county's compliance with standards developed by the task force

and the county's demonstrated commitment to compliance with the requirements of state law relating to indigent defense.

(c) The Task Force on Indigent Defense shall develop policies to ensure that funds under Subsection (a)(2) are allocated and distributed to counties in a fair manner.

(d) A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided by the Task Force on Indigent Defense under this section.

TRD-200500039

James Bethke

Director

Office of Court Administration

Filed: January 5, 2005

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**Texas Education Agency**

**Request for Applications Concerning Texas Accelerated Science Achievement Program (Texas ASAP)**

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Application (RFA) #701-04-045 from school districts or open-enrollment charter schools that meet both of the following eligibility criteria: (1) the local education agency (LEA) must include one or more high school campuses identified as under-performing, at which 64 percent or fewer 10th grade students or 85 percent or fewer 11th grade students met the state standard on the science portion of the Texas Assessment of Knowledge and Skills (TAKS) during the spring 2004 administration; and (2) the LEA has entered into a partnership or commits to entering into a partnership with the science department of an institution of higher education.

Each participating high school campus must also meet the preceding criteria to be eligible to be served under this grant program. A shared services arrangement (SSA) of two or more eligible public school districts or open-enrollment charter schools is also eligible to apply. Public school districts, open-enrollment charter schools, and education service centers will be eligible to serve as fiscal agents of an SSA. Each member district of an SSA must meet the eligibility criteria for both the LEA and for each campus identified for participation.

**Description.** The purpose of the Texas Accelerated Science Achievement Program (Texas ASAP) is to implement intensive after-school and summer school programs designed to increase 10th and 11th grade student achievement as measured by the science portions of the TAKS tests. The intent of the Texas ASAP is to provide direct and indirect (support) services to students in Grades 9 through 12 using intervention programs that target students attending high schools with low student performance on the science TAKS tests. Texas ASAP is an intensive intervention grant program focused on improving student performance on the 10th and 11th grade science TAKS tests; improving student performance for students who are in danger of not graduating within four years after entering 9th grade as a result of not passing the required science portions of the TAKS tests or not successfully completing a science course; and improving performance for student groups, such as female students and students with limited English proficiency, with persistent performance gaps in science and on statewide assessments.

**Dates of Project.** Texas ASAP will be implemented during the 2004-2005 and 2005-2006 school years. Applicants should plan for a starting date of no earlier than April 1, 2005, and an ending date of no later than December 31, 2005.

**Project Amount.** Approximately \$10 million is available for funding. Each application may reflect a maximum budget of no more than

\$50,000 per campus represented. Final funding amounts will be based on number of campuses awarded under each application. Eligible entities may not apply for multiple grants, but may apply on behalf of as many campuses as they wish in a single application.

**Selection Criteria.** Texas ASAP grant applications received by the established deadline date and time will be reviewed. Individual campus scores will be based on TAKS data for campuses and student groups. Campuses will be rank ordered based on these scores and will be funded in rank order until funds are exhausted. Applications will also be reviewed to determine the capability of the applicant to implement its proposed program. All required components of the application must be addressed to be considered for funding.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

**Requesting the Application.** A complete copy of RFA #701-04-045 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at <http://www.tea.state.tx.us/opge/disc/index.html> for viewing and downloading.

**Further Information.** For clarifying information about the Texas ASAP RFA, contact Gina S. Day, Office of Education Initiatives, Texas Education Agency, (512) 936-6060.

**Deadline for Receipt of Applications.** Applications must be received by the Texas Education Agency by 5:00 p.m. (Central Time), Thursday, February 17, 2005, to be considered for funding.

TRD-200500045  
Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Filed: January 5, 2005

## **Texas Commission on Environmental Quality**

### **Notice of a Public Hearing on Proposed Revisions to Chapter 113 and to the State Implementation Plan**

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive comments concerning revisions to 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants; and corresponding revisions to the state implementation plan (SIP). The commission is holding this public hearing to comply with the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency regulations concerning SIPs.

The proposed rulemaking would adopt by reference 50 amended and 30 new federal maximum achievable control technology standards and general provisions into Chapter 113.

A public hearing on this proposal will be held in Austin on January 31, 2005 at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Project Number 2002-036c-113-AI, and must be received by 5:00 p.m., January 31, 2005. For further information, please contact Joe Thomas, Policy and Regulations Division at (512) 239-4580 or Michael Wilhoit, Air Permits Division at (512) 239-1222.

TRD-200500025  
Stephanie Bergeron Perdue  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: January 4, 2005

### **Notice of a Public Hearing on Proposed Substitutions to Certain Transportation Control Measures Contained in the Houston/Galveston/Brazoria Metropolitan Area State Implementation Plan**

The Texas Commission on Environmental Quality (commission), in coordination with the Houston-Galveston Area Council (H-GAC), serving as the Metropolitan Planning Organization (MPO) for the Houston/Galveston/Brazoria metropolitan area (HGB), proposes to substitute certain transportation control measures (TCMs) contained in the HGB state implementation plan (SIP). As provided by commission rules, the commission and the H-GAC have initiated a process to approve substitute TCMs for the HGB SIP. Documentation regarding each proposed substitute TCM is available for public review at the commission Web site located at <http://www.tmrcc.state.tx.us/oprd/sips/tcm.html>. Documentation may also be obtained from Shelley Whitworth, Program Manager, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227-2777, or at (713) 499-6695.

The commission will hold a public hearing on this proposal on February 15, 2005, 2:00 p.m., at the Houston-Galveston Area Council, 3555 Timmons, Conference Room A, Houston, Texas. The hearing will be structured for the receipt of oral and/or written comments from interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Shelley Whitworth at (713) 499-6695. Requests for special accommodations should be made as far in advance as possible.

Comments may be submitted to Margie McAllister, Texas Commission on Environmental Quality, Office of Environmental Policy, Analysis, and Assessment, MC 206, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-5687. All comments should reference Transportation Control Measure Substitution for the HGB area. Comments must be received by 5:00 p.m., February 15, 2005. For further information, please contact Margie McAllister of the Environmental Planning and Implementation Division at (512) 239-1967.

TRD-200500041

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: January 5, 2005



#### Notice of District Petition

Notice mailed December 22, 2004.

TCEQ Internal Control No. 11182004-D04; Becky Krueger, Lonny Rinderknecht, Ronny Rinderknecht, Jeff Rinderknecht, Mike Rinderknecht, Ricky Rinderknecht, W.A. Rinderknecht, George H. Freeman, Jr., Jan Barron, Kathy Freeborn, Heidi Freeborn, Janie L. Freeborn, trustee under the Freeborn Family Living Trust dated November 15, 1994, as amended and George H. Freeman, trustee under the Freeborn Family Living Trust dated November 15, 1994, as amended (Petitioners) filed a petition for creation of Kelly Lane Water Control and Improvement District No. 2 of Travis County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 212.37 acres located within Travis County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Pflugerville, Texas and is not within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 643-04-10-12-8A, effective October 12, 2004, the City of Pflugerville, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: construct, acquire, maintain, and operate an adequate and efficient water supply and distribution system, wastewater collection and treatment system, and internal drainage and water control system for storm water flows, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$16,710,000.

#### INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4)

a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200500036

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 5, 2005



#### Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 14, 2005**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 14, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Adam Keller dba Adam's Irrigation Co. dba Adams Landscape; DOCKET NUMBER: 2003-0534-LII-E; TCEQ ID NUMBER: RN103142311; LOCATION: 7302 Mesquite Creek, San Antonio, Bexar County, Texas; TYPE OF FACILITY: landscape irrigation; RULES VIOLATED: 30 TAC §334.4(a) and (b), and TWC, §34.007(a), by altering or repairing a landscape irrigation system without obtaining the required license or being licensed by the State Board Of Plumbing Examiners; 30 TAC §344.94(b), by failing to comply with the requirement that all written contracts and bills to install irrigation systems include the statement: "Irrigation in Texas is regulated by the TCEQ" as substantiated by a copy of the contract provided to the homeowner which does not contain this statement; and 30 TAC §334.93(c), by failing to comply with the requirement prohibiting misleading or deceptive practices related to the bidding or advertising of services; PENALTY: \$375; STAFF ATTORNEY: Barbara Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233- 4480, (210) 490-3096.

(2) COMPANY: ARZ, Inc. dba Jack's Mini Market 2; DOCKET NUMBER: 2003-1013-PST-E; TCEQ ID NUMBERS: 0039738 and RN101725448; LOCATION: 13020 Market Street, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and §334.48(c), and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once per month not to exceed 35 days between each monitoring; PENALTY: \$1,925; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Dallas County Hospital District dba Parkland Health and Hospital System; DOCKET NUMBER: 2004-0134-PST-E; TCEQ ID NUMBERS: 67124 and RN102985090; LOCATION: 5201 Harry Hines Boulevard, Dallas, Dallas County, Texas; TYPE OF FACILITY: hospital with two petroleum storage tanks; RULES VIOLATED: 30 TAC §334.8(c)(5)(B)(ii) and TWC, §26.346(a), by failing to renew a delivery certificate by timely and proper submission of a new UST registration and self-certification form to the commission; PENALTY: \$900; STAFF ATTORNEY: Barbara J. Watson, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Devon Energy Production Company, L.P.; DOCKET NUMBER: 2004-1562-AIR-E; TCEQ ID NUMBERS: FG0608E and RN102540549; LOCATION: four and one half miles northwest of Needville on Highway 360, Fort Bend County, Texas; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §101.359(1), (2), and (3), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an annual compliance report; PENALTY: \$750; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(5) COMPANY: Devon Gas Services, L.P.; DOCKET NUMBER: 2003-1303-AIR-E; TCEQ ID NUMBERS: WB0051J, WB0125F, RN102600442 and RN101973006; LOCATION: one and one half miles north of Pattison on Highway 359, and three miles west of Katy, 2220 Schlipf Road, Waller County, Texas; TYPE OF FACILITY: natural gas compressor and processing; RULES VIOLATED: 30 TAC §101.359(1), (2), and (3), and THSC, §382.085(b), by failing to submit an annual compliance report; PENALTY: \$1,500; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512)

239-2029; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Frank Pokluda dba Time Mart No. 17; DOCKET NUMBER: 2003-0229-PST-E; TCEQ ID NUMBERS: 0005872 and RN101251379; LOCATION: 29503 Farm-to-Market Road 1488, Waller, Waller County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$3,800; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(7) COMPANY: Husam Jallad dba Country Boy Store 1; DOCKET NUMBER: 2003-0896-PST-E; TCEQ ID NUMBERS: 40747 and RN100810555; LOCATION: 12496 Montana Avenue, El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$2,400; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(8) COMPANY: Ideal Gas, Inc. and Ideal Gas, Inc. dba M&M Grocery; DOCKET NUMBER: 2001-0802-PST-E; TCEQ ID NUMBERS: 58526, 19912, RN101444123 and RN101880151; LOCATION: (Facility Number 58526) 511 East State Highway 114, Levelland, Hockely County and (Facility Number 19912) intersection of State Highway 114 and Farm-to-Market Road 1780, Whiteface, Cochran County, Texas; TYPE OF FACILITY: bulk and retail sales of motor fuels and oils and grocery store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vi)(I) and (B), and TWC, §26.346(a), by failing to submit a TCEQ UST registration and self-certification form for all regulated UST systems; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certification before accepting delivery of a regulated substance into the UST; and 30 TAC §334.5(b)(1)(A), by failing to verify or observe a valid, current TCEQ delivery certificate prior to depositing any regulated substance into the UST system; PENALTY: \$4,900; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239- 4761; REGIONAL OFFICE: Lubbock Regional Office, 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(9) COMPANY: Kenneth Parker dba Kountry Store; DOCKET NUMBER: 2003-1569-PST-E; TCEQ ID NUMBERS: 0034575 and RN102437001; LOCATION: 1752 Highway 7 East, Center, Shelby County, Texas; TYPE OF FACILITY: retail gas station; RULES VIOLATED: 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to have installed a method of corrosion protection for the UST system; 30 TAC §334.48(c), by failing to maintain complete and accurate inventory records; 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the UST system and failing to ensure that all tanks are monitored for releases at a frequency of at least once every month; 30 TAC §334.7(d)(3) and §334.8(c)(4)(B), and TWC, §26.346(a), by failing to provide an amended registration for any change or additional information regarding USTs and by failing to ensure that

the TCEQ UST registration and self-certification form is submitted to the agency in a timely manner; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into the UST; PENALTY: \$8,500; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Lucky Lady Oil Company dba Super Lucky Lady 2; DOCKET NUMBER: 2004- 0017-PST-E; TCEQ ID NUMBER: RN100539667; LOCATION: (Harris Methodist Hospital) 1301 Pennsylvania Avenue, Fort Worth and (Nick's Corner Mart 2) 2300 South Collins, Arlington, Tarrant County, Texas; TYPE OF FACILITY: fuel distribution; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to observe a valid, posted TCEQ-issued delivery certificate prior to delivering fuel to the sites; PENALTY: \$2,480; STAFF ATTORNEY: Barbara J. Watson, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Paco Steel Corp dba Best Pak Warehouse; DOCKET NUMBER: 2004-1029- PST-E; TCEQ ID NUMBERS: 74317 and RN100907260; LOCATION: 1415 East Loop North, Houston, Harris County, Texas; TYPE OF FACILITY: warehouse with a gasoline refueling pump; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damaged caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay petroleum storage tank fees; PENALTY: \$1,050; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

(12) COMPANY: Padma Corporation dba Step N Go; DOCKET NUMBER: 2003-0893-PST-E; TCEQ ID NUMBERS: 39391 and RN102469681; LOCATION: 8188 Spring Valley Road, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate continuous financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of its USTs; PENALTY: \$3,210; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Prince Texas Group, Inc. dba Super Stop No. 11, dba Super Stop No. 12, dba Super Stop No. 13, dba Super Stop No. 16, dba Super Stop No. 18, dba Super Stop No. 19; DOCKET NUMBER: 2002-0698-PST-E; TCEQ ID NUMBERS: 0040084, 0040079, 0040085, 0040077, 0040089, and 0040090; LOCATIONS: (Super Stop Number 11) 1125 Jefferson Drive, Port Arthur, (Super Stop Number 16) 1165 South 11th Street, Beaumont, (Super Stop Number 12) 2223 Nederland Avenue, Nederland, (Super Stop Number 13) 1202 Magnolia Avenue, Port Neches, (Super Stop Number 18) 5480 College Street, Beaumont, and (Super Stop Number 19) 6450 Calder Street, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2)(B) and THSC, §382.085(b), by failing to conduct a full system test within 30 days after the original Healy G-70-70 system was replaced with a Gilbarco system; 30 TAC §115.242(3)(M) and THSC, §382.085(b), by failing to maintain the Stage II system free of any equipment defect that would substantially

impair the effectiveness of the system in reducing refueling vapors; 30 TAC §115.246(1) and THSC, §382.085(b), by failing to have a copy of the applicable California Air Resources Board Executive Order for the vapor recovery system; 30 TAC §334.22(a), by failing to pay outstanding UST fees and late fees; 30 TAC §115.246(6) and THSC, §382.085(b), by failing to maintain records of daily inspections of the Stage II system; 30 TAC §115.248(1) and §115.246(4), and THSC, §382.085(b), by failing to make each employee aware of the purpose and correct operation of the vapor recovery equipment and failing to maintain a copy of the Stage II system facility representative certification document at the facility; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to make the Stage II system records available immediately upon request by TCEQ representatives; 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each UST with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity; 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.48(c), by failing to provide documentation that inventory control for all USTs involved in the retail sale of petroleum substances used as a motor fuel is being conducted; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to monitor piping for releases each month; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test line leak detectors for proper operation; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(C)(1), by failing to monitor the UST system for releases once per month; 30 TAC §334.8(c)(5)(C), by failing to ensure that the designated UST identification number as listed on the UST registration and self-certification form is legibly and permanently affixed in the immediate area of the appropriate fill tube; 30 TAC §334.10(b), by failing to provide requested facility records in a timely manner; and 30 TAC §334.45(c)(3)(A), by failing to install and maintain a secure anchor at the base of each UL-listed emergency shutoff valve in a piping system in which regulated substances are conveyed under pressure to an aboveground dispensing unit; PENALTY: \$4,200; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Quiroga Trucking, L.L.C. dba Quiroga Portable Common Carrier; DOCKET NUMBER: 2004-0472-PST-E; TCEQ ID NUMBER: RN103765962; LOCATION: (Fuel Expo) 101 West San Augustine, Deer Park and (Yale Shamrock) 202 West Crosstimbers, Houston, Harris County, Texas; TYPE OF FACILITY: fuel distributor; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owners or operators of the USTs at the sites had a valid, current TCEQ delivery certificates prior to depositing a regulated substance into the USTs; PENALTY: \$2,400; STAFF ATTORNEY: Barbara J. Watson, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: T J Shaikh Inc. dba Shop N Go Food Mart; DOCKET NUMBER: 2003-1554- PST-E; TCEQ ID NUMBERS: 39416 and RN102364957; LOCATION: 406 West Camp Wisdom Road, Duncanville, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release; 30 TAC §334.10(b)(1)(B), by failing to have all records pertaining to the UST immediately available upon request of agency personnel; 30 TAC §334.8(c)(5)(C), by failing to ensure that its three USTs were properly identified as listed on

the facility's UST registration and certification form; and 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), and TWC, §26.346(a), by failing to renew a delivery certificate by timely and proper submission of a new UST registration and self-certification form to the agency; PENALTY: \$4,140; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239- 2029; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Texas Petrochemicals LP and Kemiron Gulf, Inc.; DOCKET NUMBER: 2003- 0458-IWD-E; TCEQ ID NUMBER: 00587; LOCATION: approximately 1.5 miles south-southwest of the intersection of Goodyear Drive and State Highway 225, Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a) and TCEQ Texas Pollutant Discharge Elimination System Permit Number 00587, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with its effluent limits; PENALTY: \$9,950; STAFF ATTORNEY: Rebecca Nash Petty, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

TRD-200500026

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 4, 2005



#### Notice of Water Quality Applications

The following notices were issued during the period of December 22, 2004 through January 5, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711- 3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF AUSTIN has applied for a renewal of TPDES Permit No. 13318-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 1 3/4 miles north of U.S. Highway 290 East and 1/4 mile west of the intersection of Giles Road and Boyce Lane in Travis County, Texas.

BAYSHORE INDUSTRIAL, INC. which operates a polyolefin compounding plant, has applied for a renewal of TPDES Permit No. WQ0003608000, which authorizes the discharge of contact cooling water, boiler blowdown, process area wash water, storm water, and treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via Outfall 001, and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located approximately 850 feet west of the intersection of McCabe Road and State Highway 146, three miles south of the City of La Porte, Harris County, Texas.

CITY OF BLANCO has applied for a renewal of TPDES Permit No. WQ0010549002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 68 acres. The facility is located approximately 0.8 mile northeast of the intersection of U.S. Highway 281 and Farm-to-Market Road 1623 in Blanco County, Texas.

CITY OF CHARLOTTE has applied for a renewal of TPDES Permit No. 10142-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 220,000 gallons per day. The facility is located approximately 1,500 feet south and 3,100 feet west of the intersection of State Highway 140 and State Highway 97 in Atascosa County, Texas.

COMAL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 13812-002, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 6,800 gallons per day via low pressure subsurface drip irrigation of 1.65 acres. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 5,000 feet west of the intersection of State Highway 46 and U.S. Highway 281, approximately 1,000 feet south of State Highway 46 in Comal County, Texas.

CITY OF CORPUS CHRISTI has applied for a renewal of TPDES Permit No. WQ0010401009, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 13409 Whitecap Boulevard at the west end of Whitecap Boulevard on Padre Island in the City of Corpus Christi in Nueces County, Texas.

DOME PETROCHEMICAL, L.C. which operates an organic chemical and petroleum processing facility, has applied for a renewal of TPDES Permit No. WQ0004116000, which authorizes the discharge of previously monitored effluent, treated cooling tower blowdown, and non-process area storm water on a flow variable basis via Outfall 001. The facility is located at 6655 West Bay Road, adjacent and east of Cedar Bayou, approximately 2.5 miles south of State Highway 146 at Cedar Bayou Bridge, and northeast of the City of Baytown, Chambers County, Texas.

EAST CENTRAL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 13844-001, which authorizes the disposal of treated domestic wastewater at a flow not to exceed a daily average volume of 17,000 gallons per day via irrigation of 4.0 acres of publicly accessible land (school athletic field). This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located at the southwest corner of New Sulphur Springs Road and Gardner Road and approximately 3.8 miles east of the intersection of New Sulphur Springs Road and Interstate Highway Loop 410 in Bexar County, Texas.

CITY OF GOLDSMITH has applied for a renewal of Permit No. 11482-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 31,000 gallons per day via surface irrigation of 7 acres of landscape area at the plant site. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located immediately west of Farm-to-Market Road 866, approximately 3,500 feet south of State Highway 158 and south of the City of Goldsmith in Ector County, Texas.

GUADALUPE-BLANCO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0010210002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located on the south side of Farm-to-Market Road 20, approximately 2.5 miles east of the intersection of Farm-to-Market Road 20 and U.S. Highway 183 in Caldwell County, Texas.

JTM HOUSING, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014564001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per



day. The facility is located on Koeblen Road, approximately 550 feet west of Farm-to-Market Road 2977 in Fort Bend County, Texas.

CITY OF LAMESA has applied for a renewal of Permit No. 10107-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,880,000 gallons per day via irrigation of 150 acres of alfalfa, 253 acres of grass, and 567 acres of cotton/wheat. The facility and disposal site are located approximately 1-1/4 miles southeast of the intersection of State Highway 137 and Sulphur Springs Draw southeast of Lamesa in Dawson County, Texas.

CITY OF MISSOURI CITY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0013873002, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility will be located approximately 3,300 feet south of the intersection of Knight Road and Watts Plantation Road in Fort Bend County, Texas.

MIDFIELD WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 13091-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located south of the community of Midfield, approximately 1,200 feet southwest of the intersection of State Highway 71 and State Highway 111 in Matagorda County, Texas.

CITY OF MULESHOE has applied for a major amendment to Permit No. 10049-001 to decrease the non-public access agricultural acreage irrigated from 340 acres to 240 acres. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 580,000 gallons per day via surface irrigation of 78 acres of golf course and 340 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and southern disposal site are located approximately 1.5 miles south of the intersection of State Highway 214 and U.S. Highway 84 in Bailey County, Texas. The northern effluent disposal site consists of an agricultural land application site and a golf course land application site which are located approximately 1 mile northeast of the intersection of State Highway 214 and U.S. Highway 84 in Bailey County, Texas.

RIVER INN ASSOCIATION OF UNIT OWNERS, INC. has applied for a renewal of Permit No. 13755-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 6,800 gallons per day via subsurface drip irrigation on 0.92 acre. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately seven miles southwest of the City of Hunt, along State Highway 39 near the South Fork Guadalupe River in Kerr County, Texas.

SAN ANTONIO WATER SYSTEM has applied for a renewal of TCEQ Permit No. 10137-036, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 64,000 gallons per day. The facility is located approximately 0.75 mile southeast of the intersection of Farm-to-Market Road 1560 and Farm-to-Market Road 471 and approximately one mile west of the intersection of State Highway Loop 1604 and Farm-to-Market Road 471 in Bexar County, Texas.

SOMERSET INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 14284-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 10,000 gallons per day via drip irrigation of 2.3 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 600 feet west of the intersection of State Highway 16 and Smith Road, approximately 800 feet north of Smith Road, near the City of Somerset in Bexar County, Texas.

STAN TRANS PARTNERS, L.P. which operates the Central Tank Farm of the Stan Trans bulk liquid petroleum storage facility, has applied for a renewal of TPDES Permit No. WQ0002564-000, which authorizes the discharge of storm water runoff on an intermittent and flow variable basis via Outfalls 001, 002, and 003. The facility is located adjacent to the north and west side of the south slip of the Texas City Harbor, in the City of Texas City, in Galveston County, Texas.

TEJAS VIEJO LAND COMPANY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014548001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility will be located on a 20 acre tract on the south side of Jesse Bohls Road, 7,000 feet east of the Weiss Lane intersection in Travis County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. 12280-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 4.43 acres of Interstate Highway 10 right-of-way. The facility is located adjacent to and on the south side of Interstate Highway 10, between mile markers 621 and 622, approximately 10 miles east of the City of Seguin in Guadalupe County, Texas.

TEXAS LEHIGH CEMENT COMPANY LP has applied for a renewal of Permit No. 11976-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 2,700 gallons per day via surface irrigation of 240 acres of company owned farmland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1.0 mile west of Interstate Highway 35, at a point approximately 2.0 miles south of Buda in Hays County, Texas.

ROBERT HARVY THERIOT has applied for a renewal of Permit No. 14102-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 6,500 gallons per day via drip irrigation with a minimum area of 65,000 square feet. The absorption field is a non-public access area. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 0.8 mile north of the intersection of Comanche Trail and Ranch Road 620 on Comanche Trail in Travis County, Texas.

CITY OF WHARTON has applied for a renewal of TPDES Permit No. 10107-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located on the east bank of the Colorado River approximately 0.8 mile south-southeast of the intersection of State Highway 60 and Farm-to-Market Road 1299(East Street) in Wharton County, Texas.

WYNNE JACKSON, INC. AND WEST FOUNDATION has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014535001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 634,700 gallons per day. The facility is located approximately 2 miles northeast of the intersection of Highway 740 and Highway 80 in Kaufman County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to COUNTRY VISTA, LTD. to authorize disposal of the sludge from the Country Vista Wastewater Treatment Plant at another TCEQ-permitted wastewater treatment plant. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,000 gallons per day. The facility is located approximately 0.5 miles northwest of the intersection of County Road 531 and County Road 603A in Johnson County, Texas.

DOWDELL PUBLIC UTILITY DISTRICT has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to authorize the addition of a 0.38 MGD Interim II phase consisting of an added package facility to provide additional plant capacity until the 0.5 MGD phase goes into operation. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located in the northwest quadrant of the intersection of Kuykendahl Road and Dowdell Road, approximately one mile east of Farm-to-Market Road 2920, and approximately seven miles west of Interstate Highway 45 in the northwest quadrant of Harris County, Texas.

TRD-200500037

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 5, 2005



#### Notice of Water Rights Application

Notices mailed December 21, 2004 and December 31, 2004

APPLICATION NO. 4340A; The City of Lubbock ("the City"), P.O. Box 2000, Lubbock, Texas 79457, Applicant, seeks to amend Water Use Permit No. 3985 (Application No. 4340) pursuant to Texas Water Code 11.042 and 11.122, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Water Use Permit No. 3985 (Application No. 4340) authorizes the City of Lubbock to use, within the Brazos River Basin, 22,910 acre-feet of treated effluent created as a result of the City's use of municipal water purchased from the Canadian River Municipal Water Authority (CRMWA), with 4,480 acre-feet authorized for industrial use at the Jones Power Plant in Lubbock County, and 18,430 acre-feet authorized for agricultural use for the irrigation of 10,000 acres of land in Lubbock and Lynn Counties. A special condition stipulates that this permit is subject to the continued existence of a water supply contract between the City and the CRMWA. The City is authorized, via TPDES Permit No. 10353-002, to discharge an annual flow of not to exceed 9.0 MGD (10,081 acre-feet per year) of treated effluent into the North Fork Double Mountain Fork Brazos River ("North Fork"). All treated effluent discharged by the City is comprised of either groundwater or developed surface water from the Canadian River Basin. The City seeks to amend Water Use Permit No. 3985 (Application No. 4340) to authorize the diversion and use from the North Fork of all historic and future discharges of Canadian River Basin surface water-based effluent and groundwater-based effluent, including the currently authorized 10,081 acre-feet per year and to authorize the use of such water for agricultural, municipal, industrial and recreational purposes anywhere within Lubbock and Lynn Counties. The City also seeks to convey the effluent via the bed and banks of the North Fork from the discharge point authorized by TPDES Permit No. 10353-002 to a downstream diversion point. The discharge point authorized by TPDES Permit No. 10353-002 is located near the point where F.M. 400 in Lubbock County

crosses the North Fork Double Mountain Fork Brazos River, also described as being located at Latitude 33.5137 N and Longitude 101.6593 W. The most downstream point of diversion sought is located near the point where C.R. 7300 in Lubbock County crosses the North Fork Double Mountain Fork Brazos River, also described as being located at Latitude 33.493 N and Longitude 101.624 W, also being 129.75 feet bearing 265.353 south-southeast of the northeast corner of the Section Block S dated April 1967 in Lubbock County, 14.3 miles southeast of the county seat in Lubbock County and 4.5 miles northeast of the City of Slaton, Texas. The distance between the discharge point and the most downstream diversion point is approximately 14,300 feet. The City estimates that there will be losses of approximately 47.67 acre-feet per year from the discharge point to the diversion point due to transportation, evaporation, seepage, channel or other associated carriage losses from the point of discharge to the point of diversion. The Commission will review the application as submitted by the City and may or may not grant the application as requested. The application and fees were received on April 27, 2004 and additional information was received August 9 and September 2, 2004. The application was declared to be administratively complete and filed with the Office of the Chief Clerk on October 12, 2004. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by January 31, 2005.

CERTIFICATE OF ADJUDICATION NO. 14-5474; The Lower Colorado River Authority, 3700 Lake Austin Boulevard, Austin, Texas 78703, applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Extension of Time to Commence and Complete Construction pursuant to 11.145, Texas Water Code, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Certificate of Adjudication No. 14-5474, in part, authorizes the Lower Colorado River Authority (LCRA) to construct and maintain a dam and reservoir on Baylor Creek (Baylor Creek Reservoir), tributary of the Colorado River, Colorado River Basin, and to impound therein not to exceed 46,600 acre-feet of water. Station 46 + 85 on the centerline of the proposed dam is S 02 58' E, 9,650 feet from the west corner of the J.M. Hensley Survey, Abstract No.54, Fayette County, Texas. Special Condition 5F states that construction of the reservoir shall commence no later than September 18, 1991 and completed no later than September 18, 1994. Three extensions of time have been granted, the latest Order stating that construction shall commence by September 19, 2004 and be completed by September 19, 2007. The LCRA seeks an extension of time to commence and complete construction of the dam and reservoir on Baylor Creek. The applicant requests to commence construction by September 19, 2009 and complete construction by September 19, 2012. The initial design of the Fayette Power Project (FPP) proposed a phased construction with two cooling water reservoirs. Baylor and Cedar Creek. Units 1, 2 and 3 have been constructed and use one cooling reservoir, Cedar Creek. Analysis and studies were performed to determine whether or not Cedar Creek Reservoir was adequate to handle the generation capacity of the 3 units. A 1997 LCRA study concluded that it was not economical to build a Baylor Creek Reservoir to serve only the existing 3 units at that time, based on the regulatory regime then in effect and on projected electricity prices under that regime. However, the LCRA continues to reevaluate the results of that study in light of changing regulatory and economic conditions. Moreover, the LCRA projects the need for significant new generation within the 2010- 2012 time frame. Therefore, the LCRA continues to consider the construction of Unit 4, which would create a need for the Baylor Creek Reservoir. The Public Utility Commission of Texas has ordered a redesign of the market structure, based on Locational Market Pricing (LMP), where the value of generation is entirely dependent on its specific location within the transmission network. The new market

design is targeted for implementation in October 2006. The LCRA must keep the option of adding generation capacity at the FPP site available. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on August 26, 2004. Additional fees were received on October 20, 2004. The application was declared administratively complete and filed with the Office of the Chief Clerk on November 4, 2004. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

#### INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in an application.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200500035

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 5, 2005



#### Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 14, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that

indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 14, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Allied Waste Systems, Inc. dba Trinity Waste Services; DOCKET NUMBER: 2004-1205-MSW-E; IDENTIFIER: Solid Waste Registration Number 41774, Regulated Entity Reference Number (RN) 102338464; LOCATION: Hutchins, Dallas County, Texas; TYPE OF FACILITY: municipal solid waste hauling; RULE VIOLATED: 30 TAC §330.4(b), by allegedly transporting waste to a facility not authorized to accept the waste; PENALTY: \$200; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Angel Brothers Enterprises, Ltd.; DOCKET NUMBER: 2004-1441-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0031928, RN102359023; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$832; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Apache Stone Quarry, Inc.; DOCKET NUMBER: 2004-0178-WQ-E; IDENTIFIER: RN104327697; LOCATION: Salado, Bell County, Texas; TYPE OF FACILITY: dimension stone quarrying; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity; PENALTY: \$8,000; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Kaye Weeks dba Bert & Kayes Exxon; DOCKET NUMBER: 2004-1616-PST-E; IDENTIFIER: PST Facility Identification Number 16583, RN102978392; LOCATION: Frankston, Anderson County, Texas; TYPE OF FACILITY: automotive service station; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: Akber Ali dba Best Stop Food Mart; DOCKET NUMBER: 2004-1417-PST-E; IDENTIFIER: PST Facility Identification Number 58253, RN101497113; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,900;

ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(6) COMPANY: City of Brazoria; DOCKET NUMBER: 2004-0504-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010133001, RN101613552; LOCATION: Brazoria, Brazoria County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.105(1) - (5), §305.535(c), TPDES Permit Number WQ0010133001, and the Code, §26.121(a)(1), by failing to operate and maintain the wastewater collection system to prevent the unauthorized discharges of untreated wastewater; PENALTY: \$12,737; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Caldwell/VSR Inc.; DOCKET NUMBER: 2004-1257-AIR-E; IDENTIFIER: Air Account Numbers HN0496A and HN0371V, RN101379923 and RN100215458; LOCATION: Weslaco, Hidalgo County, Texas; TYPE OF FACILITY: window blind manufacturing; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit their complete and timely annual federal operating permit compliance certification; 30 TAC §122.145(2)(A) and THSC, §382.085(b), by failing to submit their complete and timely deviation report; and 30 TAC §116.110(a)(1) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit prior to construction; PENALTY: \$8,850; ENFORCEMENT COORDINATOR: Jill Reed, (915) 570-1359; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: Chevron USA, Inc.; DOCKET NUMBER: 2004-0499-AIR-E; IDENTIFIER: Air Account Number HG0312R, RN100706811; LOCATION: Galena Park, Harris County, Texas; TYPE OF FACILITY: gasoline terminal; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 33373, and THSC, §382.085(b), by exceeding the maximum filling rate for tanks and trucks; PENALTY: \$21,750; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Cypress 4F Cattle & Ranch, Ltd.; DOCKET NUMBER: 2004-1418-EAQ-E; IDENTIFIER: RN104355862; LOCATION: Bee Cave, Travis County, Texas; TYPE OF FACILITY: land; RULE VIOLATED: 30 TAC §213.23(a)(1)(A) and (B), by failing to submit a contributing zone plan and obtain approval of the plan; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(10) COMPANY: Devon Louisiana Corporation; DOCKET NUMBER: 2004-1289-AIR-E; IDENTIFIER: RN1043035651 LOCATION: Kemah, Galveston County, Texas; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §101.352(b) and THSC, §382.085(b), by failing to hold a quantity of allowances in the facility's compliance account that is equal to or greater than the emissions of nitrogen oxides emitted; PENALTY: \$600; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Duco, Inc.; DOCKET NUMBER: 2004-1648-IWD-E; IDENTIFIER: TPDES Permit Number 12874001, RN102183647; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12874001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits;

PENALTY: \$4,200; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: City of Edinburg; DOCKET NUMBER: 2004-0502-MWD-E; IDENTIFIER: TPDES Permit Number 10503-002, RN102080603; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (9), TPDES Permit Number 10503-002, and the Code, §26.121(a), by failing to comply with the permitted ammonia nitrogen daily average permit limit and the total suspended solids (TSS) daily maximum limit and by failing to submit written notification of a noncompliant event which resulted in a fish kill; PENALTY: \$26,600; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(13) COMPANY: Vina R. Patel dba Glad Mart 1; DOCKET NUMBER: 2004-1094-PST-E; IDENTIFIER: PST Facility Identification Number 66804, RN102009339; LOCATION: Grand Prairie, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,900; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Hanlon Gas Processing, Ltd.; DOCKET NUMBER: 2004-1521-AIR-E; IDENTIFIER: Air Account Number SN0012Q, RN102929619; LOCATION: near Breckenridge, Stephens County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit the annual certification of compliance; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(15) COMPANY: Hausman Road Partners, Ltd.; DOCKET NUMBER: 2004-0768-EAQ-E; IDENTIFIER: Edwards Aquifer Registration Number 13-00081001, RN102745965; LOCATION: Helotes, Bexar County, Texas; TYPE OF FACILITY: land development partnership; RULE VIOLATED: 30 TAC §213.5(f)(1)(A)(i), by failing to provide the TCEQ regional office with notice that construction was to commence at the site; 30 TAC §213.4(a)(1) and (k), by failing to receive commission approval of a major modification, by failing to adhere to the special condition contained in the approved Edwards Aquifer protection plan (EAPP) which requires that all structures at the site be constructed according to, and in compliance with, the approved EAPP, and by failing to adhere to the special condition contained in the approved EAPP which required certification of the water quality basins; PENALTY: \$7,000; ENFORCEMENT COORDINATOR: Rebecca Clauswitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: Hoot Johnson Construction, Inc.; DOCKET NUMBER: 2004-1393-WQ-E; IDENTIFIER: RN104355847; LOCATION: Pflugerville, Travis County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity; and the Code, §26.121(a)(2), by failing to control the unauthorized discharge of construction storm water; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(17) COMPANY: Kingsville Material Corporation; DOCKET NUMBER: 2004-0021-AIR-E; IDENTIFIER: Permit Number 56801L001,

RN100815687; LOCATION: Benavides, Duval County, Texas; TYPE OF FACILITY: rock crushing; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a), by failing to obtain a new source review permit, satisfy the conditions for a standard permit, flexible permit, or permit by rule, or satisfy the criteria for a de minimis facility; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(18) COMPANY: City of Kirvin; DOCKET NUMBER: 2004-1100-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 0810019; LOCATION: Kirvin, Freestone County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(h)(2) and (3), by failing to provide written notification before starting commission conditionally approved construction of the installation of a 1,500 gallon pressure tank and provide notification of the completion of the construction; 30 TAC §290.46(f)(2) and (v), by failing to maintain and provide water works operation and maintenance activities records and have them accessible and by failing to install all water system electrical wiring in a securely mounted conduit; 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.43(c)(2) and (4) and (e), by failing to equip the ground storage tank's roof hatch with a gasket to form a positive seal and with a liquid level indicator and by failing to provide an intruder-resistant fence with lockable gates; and 30 TAC §290.41(c)(1)(D) and (3)(M), by failing to prevent livestock in pastures within 50 feet of water supply wells and by failing to provide a suitable sampling cock on the discharge pipe; PENALTY: \$3,235; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: Lewisville Landfill Texas, LP; DOCKET NUMBER: 2004-1212-MSW-E; IDENTIFIER: Municipal Solid Waste (MSW) Permit Number 1749B, RN102006186; LOCATION: Lewisville, Denton County, Texas; TYPE OF FACILITY: MSW landfill; RULE VIOLATED: 30 TAC §330.4(b) and §330.117(c), by failing to prevent the disposal of MSW at an unauthorized facility; PENALTY: \$900; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588- 5800.

(20) COMPANY: Lone Star Petroleum LP dba Hidden Meadows Shell; DOCKET NUMBER: 2004-1422-PST-E; IDENTIFIER: PST Facility Identification Number 72589, RN101732311; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking is permanently applied or fixed to either the top of the fill tube or to a non- removable point in the immediate area of the fill tube; 30 TAC §334.10(b), by failing to maintain records of tank and product overfill prevention; and 30 TAC §334.48(c) and §334.50(d)(9)(A)(iii), by failing to conduct the required inventory control procedures for underground storage tanks (USTs); PENALTY: \$4,725; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Martin Eagle Oil Company, Inc.; DOCKET NUMBER: 2004-1304-PST-E; IDENTIFIER: RN102790649; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$11,600; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: North Orange Water & Sewer, LLC; DOCKET NUMBER: 2004-1440- MWD-E; IDENTIFIER: TPDES Permit Number 13072-001; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §30.5(a) and TPDES Permit Number 13072-001, by failing to employ a licensed operator; 30 TAC §305.125(5) and (9), §317.3(e)(5), TPDES Permit Number 13072-001, and the Code, §26.121(a)(1), by failing to maintain an operable-visual alarm system, by failing to prevent an unauthorized discharge, and by failing to submit non-compliance notification for the unauthorized discharge; PENALTY: \$7,680; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: Pool Company Texas Ltd.; DOCKET NUMBER: 2004-1151-WQ-E; IDENTIFIER: RN103763223; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: vehicle maintenance; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity; and 30 TAC §330.5, by failing to manage waste so as to prevent a discharge to the environment; PENALTY: \$4,200; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239- 3308; REGIONAL OFFICE: 622 South Oaks, Suite K, San Angelo, Texas 76903-7013, (915) 655- 9479.

(24) COMPANY: Jay and Kishan, LLC dba Shell Food Mart; DOCKET NUMBER: 2004-1150- PST-E; IDENTIFIER: PST Facility Identification Number 73145, RN101733046; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(a), by failing to monitor the UST system for releases; PENALTY: \$1,800; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(25) COMPANY: Smith's Texas Quick Stop, Inc.; DOCKET NUMBER: 2004-1443-PST-E; IDENTIFIER: PST Facility Identification Number 62113, RN101886026; LOCATION: Vega, Oldham County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Leila Pezeshki, (210) 490-3096; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(26) COMPANY: Southmost Aviation, Inc.; DOCKET NUMBER: 2004-1275-PST-E; IDENTIFIER: PST Facility Identification Number 18715, RN101678613; LOCATION: Brownsville, Cameron County, Texas; TYPE OF FACILITY: aviation fuel sales; RULE VIOLATED: 30 TAC §334.48(c), by failing to have an effective manual or automatic inventory control procedure; 30 TAC §334.49(c)(4)(C) and the Code, §26.3475(d), by failing to perform an operability test on a cathodic protection system; and 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(b), by failing to provide a capable release detection method; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(27) COMPANY: Tecon Water Company, L.P. dba Cherokee Shores Water Supply and Granbury Acres Water System; DOCKET NUMBER: 2004-1101-PWS-E; IDENTIFIER: PWS Numbers 1070206 and 1110109, RN101380889 and RN101380509; LOCATION: near Mabank and Granbury, Henderson and Hood Counties, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(1) and (2) and (j), by failing to maintain the water system's records in an organized manner and by failing to obtain

customer service inspection certifications completed by a properly credentialed individual; 30 TAC §290.45(b)(1)(C)(i) and (ii) and (2)(B) and THSC, §341.0315(c), by failing to provide a well and treatment plant capacity of 0.6 gpm per connection and by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.42(d)(11)(D)(i) and (e)(5), by failing to equip each filter unit with a manually adjustable rate-of-flow controller with a rate-of-flow indication or flow control valves with indicators and by failing to ensure that the hypochlorination solution top is completely covered; and 30 TAC §290.41(c)(3)(I), by failing to fine grade the number one well site; PENALTY: \$7,390; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2004-1203- MWD-E; IDENTIFIER: TPDES Permit Number 11325-001, RN102186368; LOCATION: Huntsville, Walker County, Texas; TYPE OF FACILITY: interstate highway rest area with domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11325-001, and the Code, §26.121(a), by failing to comply with the daily average permit limit for TSS and five-day biochemical oxygen demand; PENALTY: \$2,064; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Texas and Kansas City Cable Partners, L.P. dba Time Warner Cable; DOCKET NUMBER: 2004-1451-PST-E; IDENTIFIER: PST Facility Identification Number 60119, RN101052975; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: communications; RULE VIOLATED: 30 TAC §334.49(c)(4) and

the Code, §26.3475(d), by failing to ensure that the UST system is inspected and tested to determine the adequacy of the cathodic protection; and 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to ensure that the UST registration and self-certification form is fully and accurately completed; PENALTY: \$2,856; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Varco, L.P. dba Varco Shaffer; DOCKET NUMBER: 2004-1506-AIR-E; IDENTIFIER: Air Account Number HG0509T, Operating Permit Number O-02144, RN100211457; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: oil field equipment manufacturing; RULE VIOLATED: 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit the semi-annual deviation report; and 30 TAC §122.143(4), Operating Permit Number O-02144, and THSC, §382.085(b), by failing to conduct the annual opacity observance; PENALTY: \$3,136; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200500014

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 4, 2005

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**Department of State Health Services**

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

**NEW LICENSES ISSUED:**

| Location      | Name   | License # | City          | Amendment # | Date of Action |
|---------------|--|-----------|---------------|-------------|----------------|
| Lufkin        | Temple Imaging Center                              | L05839    | Lufkin        | 00          | 12/20/04       |
| Pasadena      | The Dow Chemical Co Clear Lake Operations          | L05829    | Pasadena      | 00          | 12/30/04       |
| Plano         | Baylor Regional Medical Center of Plano            | L05844    | Plano         | 00          | 12/13/04       |
| The Woodlands | St Lukes Community Medical Center<br>The Woodlands | L05763    | The Woodlands | 00          | 12/20/04       |

**AMENDMENTS TO EXISTING LICENSES ISSUED:**

| Location       | Name   | License # | City           | Amendment # | Date of Action |
|----------------|--|-----------|----------------|-------------|----------------|
| Amarillo       | Baptist St Anthonys Health System  | L01259    | Amarillo       | 75          | 12/23/04       |
| Amarillo       | Amarillo Diagnostic Clinic   | L04085    | Amarillo       | 19          | 12/23/04       |
| Aransas Pass   | North Bay General Hospital<br>DBA North Bay Hospital   | L03446    | Aransas Pass   | 29          | 12/29/04       |
| Arlington      | Arlington Memorial Hospital  | L02217    | Arlington      | 82          | 12/30/04       |
| Athens         | East Texas Medical Center  | L02470    | Athens         | 36          | 12/14/04       |
| Austin         | Capital Cardiovascular Consultants   | L05590    | Austin         | 07          | 12/22/04       |
| Austin         | Seton Medical Center<br>Risk Management Dept   | L02896    | Austin         | 79          | 12/15/04       |
| Bay City       | Celanese LTD Bay City Plant  | L00246    | Bay City       | 38          | 12/15/04       |
| Beaumont       | Gerdau Ameristeel US Inc<br>DBA Gerdau Ameristeel Beaumont   | L02122    | Beaumont       | 25          | 12/30/04       |
| Bedford        | Carter Bloodcare   | L00630    | Bedford        | 39          | 12/21/04       |
| Bedford        | Columbia North Hills Outpatient Imaging<br>Center Subsidiary LP<br>DBA North Hills Outpatient Imaging Center | L03455    | Bedford        | 39          | 12/20/04       |
| Carrollton     | Stmicroelectronics Inc   | L03930    | Carrollton     | 20          | 12/30/04       |
| Channelview    | Lyondell Chemical Company  | L04439    | Channelview    | 21          | 12/13/04       |
| Channelview    | Equistar Chemicals LP  | L00064    | Channelview    | 39          | 12/13/04       |
| Cleburne       | Numed Imaging Centers Inc  | L05762    | Cleburne       | 02          | 12/29/04       |
| Conroe         | Montgomery County Cardiovascular Assoc   | L05151    | Conroe         | 12          | 12/21/04       |
| Corpus Christi | A Lee Guinn MD PA<br>Shoreline Diagnostic Center   | L05799    | Corpus Christi | 01          | 12/23/04       |
| Dallas         | Baylor University Medical Center   | L01290    | Dallas         | 68          | 12/17/04       |
| Dallas         | Cor Specialty Associates of North Texas PA<br>DBA The Dallas Heart Group                                     | L04694    | Dallas         | 23          | 12/27/04       |
| Denton         | Neorx Manufacturing Group Inc  | L05433    | Denton         | 12          | 12/21/04       |
| Denton         | University of North Texas  | L00101    | Denton         | 79          | 12/29/04       |
| El Paso        | Cardinal Health 200 Inc<br>Medical Products and Serv Convertors Div  | L02407    | El Paso        | 28          | 12/23/04       |
| Fort Worth     | Physician Reliance LP<br>DBA Texas Oncology at Klabzuba  | L05545    | Fort Worth     | 08          | 12/14/04       |

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location     | Name   | License # | City         | Amendment # | Date of Action |
|--------------|--|-----------|--------------|-------------|----------------|
| Fort Worth   | Harris Methodist Fort Worth  | L01837    | Fort Worth   | 95          | 12/15/04       |
| Fort Worth   | Alcon Laboratories Inc<br>William C Connor Research Center   | L01281    | Fort Worth   | 40          | 12/16/04       |
| Fort Worth   | John Peter Smith Hospital  | L02208    | Fort Worth   | 52          | 12/30/04       |
| Glen Rose    | Glen Rose Medical Foundation Inc.<br>DBA Glen Rose Medical Center  | L03225    | Glen Rose    | 19          | 12/16/04       |
| Grapevine    | Numed Imaging Centers Inc  | L05016    | Grapevine    | 14          | 12/29/04       |
| Harlingen    | Valley Coop Oil Mill   | L02908    | Harlingen    | 09          | 12/21/04       |
| Houston      | Memorial Hermann Hospital System<br>DBA Memorial Hospital Southwest  | L00439    | Houston      | 99          | 12/16/04       |
| Houston      | Woodlands-North Houston Cardiovascular<br>Imaging Center   | L04253    | Houston      | 18          | 12/16/04       |
| Houston      | Memorial Hermann Hospital System<br>DBA Memorial Hermann Hospital Memorial<br>City Nuclear Medicine Department | L01168    | Houston      | 82          | 12/16/04       |
| Houston      | St Lukes Episcopal Health System Corp<br>DBA St Lukes Episcopal Health System and<br>Texas Heart Institute     | L00581    | Houston      | 80          | 12/20/04       |
| Houston      | Diagnostic Clinic of Houston<br>Nuclear Medicine   | L03452    | Houston      | 29          | 12/22/04       |
| Humble       | Houston Heart Clinic   | L05671    | Humble       | 02          | 12/15/04       |
| Irving       | Healthcare Associates of Irving LP   | L05371    | Irving       | 03          | 12/16/04       |
| Irving       | Baylor Medical Center at Irving<br>DBA Irving Healthcare System  | L02444    | Irving       | 55          | 12/01/04       |
| Jacksonville | Regional Health Care Center<br>DBA Mother Frances Hospital - Jacksonville                                      | L05362    | Jacksonville | 20          | 12/15/04       |
| Longview     | Longview Regional Hospital Inc.<br>DBA Longview Regional Medical Center  | L02882    | Longview     | 35          | 12/17/04       |
| Lubbock      | Covenant Medical Center  | L00483    | Lubbock      | 127         | 12/16/04       |
| Lubbock      | Covenant Health System<br>DBA Covenant Medical Center - Lakeside   | L01547    | Lubbock      | 81          | 12/16/04       |
| Lubbock      | University Medical Center  | L04719    | Lubbock      | 73          | 12/17/04       |
| McAllen      | McAllen Hospitals LP<br>DBA McAllen Medical Center   | L01713    | McAllen      | 70          | 12/23/04       |
| Midland      | Midland County Hospital District<br>DBA Midland Memorial Hospital  | L00728    | Midland      | 72          | 12/21/04       |
| Nacogdoches  | Nacogdoches Medical Center   | L02853    | Nacogdoches  | 34          | 12/10/04       |
| Pasadena     | Celanese LTD Clear Lake Plant  | L01130    | Pasadena     | 59          | 12/15/04       |
| Pasadena     | Conam Inspection & Engineering Inc.  | L05010    | Pasadena     | 80          | 12/17/04       |
| San Antonio  | South Texas Blood & Tissue Center  | L04381    | San Antonio  | 09          | 12/14/04       |
| San Antonio  | Methodist Healthcare System of San Antonio<br>DBA Methodist Hospital   | L00594    | San Antonio  | 196         | 12/22/04       |
| San Antonio  | Christus Santa Rosa Health Care  | L02237    | San Antonio  | 80          | 12/22/04       |
| San Antonio  | The Univ of TX Health Sci Ctr at San Antonio<br>DBA UTSCSA Research Imaging Center                             | L05556    | San Antonio  | 04          | 12/23/04       |
| Stephenville | Harris Methodist Erath County  | L03097    | Stephenville | 26          | 12/22/04       |



CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location        | Name  | License # | City            | Amend-<br>ment # | Date of<br>Action |
|-----------------|---|-----------|-----------------|------------------|-------------------|
| Sulphur Springs | Medical Sugical Clinic of Sulphur Springs<br>DBA Sulphur Springs Family Health Care<br>Associates | L05701    | Sulphur Springs | 03               | 12/21/04          |
| Sweetwater      | Rolling Plains Memorial Hospital  | L02550    | Sweetwater      | 19               | 12/14/04          |
| Texas City      | Sid Acharya MD PA<br>DBA Cardiovascular Specialists of Texas                                      | L05714    | Texas City      | 02               | 12/27/04          |
| The Woodlands   | CB & I Constructors Inc.  | L01902    | The Woodlands   | 64               | 12/20/04          |
| The Woodlands   | e + PET Imaging VIII LP<br>DBA PET Imaging of The Woodlands                                       | L05747    | The Woodlands   | 04               | 12/29/04          |
| The Woodlands   | Memorial Hospital The Woodlands   | L03772    | The Woodlands   | 40               | 12/30/04          |
| Throughout TX   | Team Cooperheat – MQS Inc.<br>DBA Cooperheat – MQS  | L00087    | Alvin           | 125              | 12/17/04          |
| Throughout TX   | Lower Colorado River Authority  | L02738    | Austin          | 34               | 12/22/04          |
| Throughout TX   | Applied Standards Inspection Inc.   | L03072    | Beaumont        | 87               | 12/20/04          |
| Throughout TX   | Applied Standards Inspection Inc  | L03072    | Beaumont        | 88               | 12/28/04          |
| Throughout TX   | Gulf Coast Weld Spec  | L05426    | Beaumont        | 30               | 12/14/04          |
| Throughout TX   | C D S Enterprises Inc.  | L05356    | College Station | 01               | 12/22/04          |
| Throughout TX   | Sterigenics US Inc  | L03851    | Fort Worth      | 32               | 12/23/04          |
| Throughout TX   | The Dow Chemical Company<br>Texas Operations  | L00451    | Freeport        | 73               | 12/30/04          |
| Throughout TX   | H&G Inspection Company Inc.<br>ADBA Statewide Maintenance Company                                 | L02181    | Houston         | 192              | 12/23/04          |
| Throughout TX   | Stork Southwestern Laboratories Inc.  | L05269    | Houston         | 10               | 12/16/04          |
| Throughout TX   | Metco   | L03018    | Houston         | 149              | 12/16/04          |
| Throughout TX   | Remington Support Services Inc  | L05642    | Houston         | 05               | 12/28/04          |
| Throughout TX   | H & G Inspection Company Inc<br>ADBA Statewide Maintenance Company                                | L02181    | Houston         | 190              | 12/15/04          |
| Throughout TX   | H & G Inspection Company Inc<br>ADBA Statewide Maintenance Company                                | L02181    | Houston         | 191              | 12/20/04          |
| Throughout TX   | Aitec USA Inc   | L05718    | Houston         | 08               | 12/15/04          |
| Throughout TX   | OSCS Inc  | L05813    | Keene           | 01               | 12/22/04          |
| Throughout TX   | Longview Inspection Inc.  | L01774    | La Porte        | 210              | 12/21/04          |
| Throughout TX   | Longview Inspection Inc.  | L01774    | La Porte        | 211              | 12/22/04          |
| Throughout TX   | Southern Services Inc.<br>DBA Southern Technical Services<br>DBA Bix Testing Laboratories         | L05270    | Lake Jackson    | 37               | 12/16/04          |
| Throughout TX   | Spectro Analytical Instruments Inc  | L02788    | Marble Falls    | 43               | 12/30/04          |
| Throughout TX   | Eagle X-Ray   | L03246    | Mont Belvieu    | 85               | 12/21/04          |
| Throughout TX   | Dean Word Company LTD   | L04588    | New Braunfels   | 07               | 12/22/04          |
| Throughout TX   | Big State X-Ray   | L02693    | Odessa          | 40               | 12/16/04          |
| Throughout TX   | Link Field Services Inc.  | L05383    | Olden           | 13               | 12/22/04          |
| Throughout TX   | Texas Gamma Ray LLC   | L05561    | Pasadena        | 43               | 12/07/04          |
| Throughout TX   | Conam Inspection & Engineering Inc  | L05010    | Pasadena        | 81               | 12/29/04          |
| Throughout TX   | Midwest Inspection Services   | L03120    | Perryton        | 75               | 12/16/04          |
| Throughout TX   | Isbell Engineering Group Inc.   | L05355    | Sanger          | 07               | 12/22/04          |
| Throughout TX   | GCT Inspection Inc  | L02378    | South Houston   | 82               | 12/13/04          |
| Throughout TX   | Schlumberger Technology Corporation   | L01833    | Sugar Land      | 122              | 12/13/04          |
| Tomball         | Tomball Hospital Authority<br>DBA Tomball Regional Hospital                                       | L02514    | Tomball         | 33               | 12/30/04          |

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location | Name   | License # | City  | Amend-<br>ment # | Date of<br>Action |
|----------|--|-----------|-------|------------------|-------------------|
| Tyler    | Trinity Mother Frances Health System             | L01670    | Tyler | 113              | 12/14/04          |
| Tyler    | East Texas Medical Center Healthcare Association | L05702    | Tyler | 05               | 12/16/04          |
| Tyler    | The University of Texas Health Ctr at Tyler      | L04117    | Tyler | 32               | 12/23/04          |
| Tyler    | Allens Nutech Inc<br>DBA Nutech Inc              | L05511    | Tyler | 06               | 12/16/04          |
| Tyler    | East Texas Medical Center                        | L00977    | Tyler | 118              | 12/29/04          |

RENEWAL OF LICENSES ISSUED:

| Location       | Name   | License # | City           | Amend-<br>ment # | Date of<br>Action |
|----------------|--|-----------|----------------|------------------|-------------------|
| Amarillo       | Baptist St Anthonys Health System  | L01259    | Amarillo       | 74               | 12/16/04          |
| Austin         | Howerton Eye Center<br>DBA Eye Center                                    | L03318    | Austin         | 06               | 12/21/04          |
| Austin         | Austin Texas Radiation Oncology Group PA<br>DBA Austin Cancer Centers    | L01761    | Austin         | 52               | 12/21/04          |
| Austin         | Austin Cardiovascular Associates   | L05172    | Austin         | 10               | 12/22/04          |
| Austin         | Austin Heart PA  | L04623    | Austin         | 22               | 12/23/04          |
| Baytown        | Jacinto MRI and Diagnostic Center  | L04808    | Baytown        | 12               | 12/23/04          |
| Beaumont       | Lifeshare Blood Centers  | L04884    | Beaumont       | 09               | 12/23/04          |
| Bonham         | Northeast Medical Center LP<br>DBA Northeast Medical Center              | L03331    | Bonham         | 23               | 12/21/04          |
| Columbus       | Columbus Community Hospital  | L03508    | Columbus       | 11               | 12/21/04          |
| Conroe         | Drilling Specialties Company   | L04825    | Conroe         | 08               | 12/23/04          |
| Corpus Christi | Coastal Cardiology Association   | L04754    | Corpus Christi | 20               | 12/13/04          |
| Corpus Christi | Christus Health<br>DBA Christus Spohn Hospital Memorial                  | L00265    | Corpus Christi | 77               | 12/21/04          |
| Corpus Christi | Christus Health<br>DBA Christus Spohn Hospital Memorial                  | L00265    | Corpus Christi | 78               | 12/21/04          |
| Corpus Christi | Escot NDE Inc<br>DBA Basin Industrial X-Ray                              | L05002    | Corpus Christi | 20               | 12/23/04          |
| Dallas         | Immuno Diagnostic Center Inc   | L04365    | Dallas         | 08               | 12/21/04          |
| Dallas         | North Texas Heart Center PA  | L04608    | Dallas         | 26               | 12/21/04          |
| Dallas         | Cumbre Inc   | L05474    | Dallas         | 03               | 12/27/04          |
| El Paso        | El Paso Community College<br>Transmountain Campus Executive Dean         | L05069    | El Paso        | 01               | 12/20/04          |
| Fort Worth     | Harris Methodist Fort Worth  | L01837    | Fort Worth     | 96               | 12/21/04          |
| Fort Worth     | Radiology Associates of Tarrant County PA<br>DBA Tarrant PET Imaging LLC | L05387    | Fort Worth     | 04               | 12/23/04          |
| Granbury       | Granbury Hospital Corporation<br>DBA Lake Granbury Medical               | L02903    | Granbury       | 25               | 12/21/04          |
| Houston        | Cypress Fairbanks Cardiology Associates                                  | L04353    | Houston        | 17               | 12/21/04          |
| Houston        | Houston Community College System   | L03099    | Houston        | 15               | 12/21/04          |
| Houston        | Wyle Laboratories Inc<br>Life Sciences and Services                      | L04813    | Houston        | 06               | 12/23/04          |
| Houston        | Cardiology Associates  | L05500    | Houston        | 06               | 12/27/04          |
| Iowa Park      | Excel Imaging Inc  | L05277    | Iowa Park      | 02               | 12/20/04          |

CONTINUED RENEWAL OF LICENSES ISSUED:

| Location      | Name   | License # | City           | Amend-<br>ment # | Date of<br>Action |
|---------------|--|-----------|----------------|------------------|-------------------|
| La Grange     | Fayette Memorial Hospital  | L03572    | La Grange      | 18               | 12/10/04          |
| Marble Falls  | Marble Falls Imaging Center LP<br>DBA Marble Falls Imaging Center      | L05301    | Marble Falls   | 06               | 12/23/04          |
| McAllen       | Advanced Nuclear Imaging Inc   | L05467    | McAllen        | 04               | 12/27/04          |
| McKinney      | Taysir F Jarrah MD PA Cardiology                                       | L05464    | McKinney       | 03               | 12/27/04          |
| Mission       | Valley Nuclear Incorporated  | L04521    | Mission        | 18               | 12/23/04          |
| Odessa        | Goldier Cat Scan and MRI Center  | L04770    | Odessa         | 05               | 12/22/04          |
| Pasadena      | Cardiovascular Center PA   | L04345    | Pasadena       | 11               | 12/21/04          |
| Richmond      | Matrix Metals LLC<br>DBA Richmond Foundry                              | L00312    | Richmond       | 44               | 12/20/04          |
| San Antonio   | Methodist Healthcare System of San Antonio<br>DBA Methodist Hospital   | L00594    | San Antonio    | 197              | 12/29/04          |
| Texarkana     | Christus Health Ark-La-Tex<br>DBA Christus Saint Michael Health System | L04805    | Texarkana      | 13               | 12/23/04          |
| Throughout TX | Amarillo Testing & Engineering Inc                                     | L02658    | Amarillo       | 14               | 12/17/04          |
| Throughout TX | Houston Inc  | L04362    | Andrews        | 08               | 12/21/04          |
| Throughout TX | Industrial Asphalt Inc   | L05453    | Austin         | 04               | 12/27/04          |
| Throughout TX | Radiation Technology Inc   | L04633    | Austin         | 16               | 12/23/04          |
| Throughout TX | N-Spec Quality Services Inc  | L05113    | Corpus Christi | 21               | 12/30/04          |
| Throughout TX | Henley Johnston & Associates Inc.                                      | L00286    | Dallas         | 28               | 12/20/04          |
| Throughout TX | Fargo Consultants Inc  | L05300    | Dallas         | 05               | 12/27/04          |
| Throughout TX | Neorx Manufacturing Group Inc  | L05433    | Denton         | 13               | 12/23/04          |
| Throughout TX | Amec Earth & Environmental Inc   | L03622    | El Paso        | 18               | 12/21/04          |
| Throughout TX | Probe Technology Services Inc  | L05112    | Fort Worth     | 13               | 12/16/04          |
| Throughout TX | Mactec Engineering and Consulting Inc                                  | L05490    | Fort Worth     | 06               | 12/27/04          |
| Throughout TX | TSIT   | L05697    | Fort Worth     | 01               | 12/20/04          |
| Throughout TX | Superior Production Logging Inc<br>DBA SPL Wireline Services           | L01983    | Granbury       | 38               | 12/21/04          |
| Throughout TX | Baker Hughes Oilfield Operations Inc.<br>DBA Baker Atlas               | L00446    | Houston        | 155              | 12/20/04          |
| Throughout TX | Ground Technology Inc.   | L05125    | Houston        | 09               | 12/23/04          |
| Throughout TX | Atser Corporation  | L04741    | Houston        | 19               | 12/23/04          |
| Throughout TX | Ground Technology Inc  | L05125    | Houston        | 08               | 12/23/04          |
| Throughout TX | High Plains Underground Water Conservation<br>District No 1            | L02598    | Lubbock        | 19               | 12/21/04          |
| Throughout TX | Texas Oncology PA<br>DBA South Texas PET Imaging                       | L05485    | McAllen        | 05               | 12/27/04          |
| Throughout TX | Big State X-Ray  | L02693    | Odessa         | 39               | 12/16/04          |
| Throughout TX | Artss Inspection and Pipe Service                                      | L04735    | Odessa         | 05               | 12/23/04          |
| Throughout TX | Industrial Resolution Imaging Services Inc<br>DBA Scanmasters          | L05730    | Pearland       | 02               | 12/27/04          |
| Tyler         | Tyler PET Imaging Institute LP   | L05476    | Tyler          | 03               | 12/27/04          |
| Tyler         | Sigal Heart Center   | L05704    | Tyler          | 01               | 12/27/04          |
| Webster       | Roger C Willette MD PA<br>DBA Space Center Medical Clinic              | L05466    | Webster        | 03               | 12/27/04          |

#### TERMINATIONS OF LICENSES ISSUED:

| Location      | Name  | License # | City    | Amendment # | Date of Action |
|---------------|---|-----------|---------|-------------|----------------|
| Austin        | Sasol North America Inc                             | L04520    | Austin  | 07          | 12/15/04       |
| Throughout TX | Independent Testing Laboratories                    | L03795    | Houston | 31          | 12/16/04       |
| Throughout TX | Granite Construction Company<br>Lubbock Area Branch | L04836    | Lubbock | 07          | 12/23/04       |

#### LICENSE EXEMPTION ISSUED:

| Location | Name                       | License # | City    | Amendment # | Date of Action |
|----------|----------------------------|-----------|---------|-------------|----------------|
| Midland  | Kellys Pipe Inspection Inc | L05120    | Midland |             | 12/16/04       |

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200500033  
Cathy Campbell  
Director, Legal Services  
Department of State Health Services  
Filed: January 5, 2005



#### Notice of Administrative Renewal of the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Department of State Health Services (department), Radiation Safety Licensing Branch, that it proposes to grant an administrative renewal pursuant to Title 25, Texas Administrative Code (TAC), §289.252(y) for a two-year period for Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

The department has determined that WCS has paid its license renewal fee, has a satisfactory compliance history and otherwise complies with the requirements of 25 TAC, §289.252(y). The proposed two-year administrative renewal of the license does not reflect any operational or procedural changes to the license.

It is noted that the department has received a timely application for technical renewal of the license under 25 TAC, §289.252(z). The submitted application for a technical renewal of the license is pending before the department and it is **not** associated with this licensing action.

This notice affords the opportunity for a public hearing, upon written request, within 30 days from the date of publication of this notice by a person affected as required by Texas Health and Safety Code,

§401.114, and as set out in 25 TAC, §289.205(e). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas, 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the proposed issuance of the license will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Chapter 2001, Texas Government Code), the formal hearing procedures of the department (25 TAC, §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the proposed license and information regarding the two-year administrative renewal is available for public inspection and copying, by appointment, at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m., Monday-Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting

Chrissie Tounge, Custodian of Records, of the Radiation Safety Licensing Branch.

The administrative renewal is to be issued, if no hearing is required, in Austin, Texas, 30 days following the posting date of this notice.

TRD-200500031

Cathy Campbell

Director, Legal Services

Department of State Health Services

Filed: January 5, 2005



#### Notice of Agreed Order with Imaging and Medical Diagnostic Specialists, P.A., dba Central Imaging of Arlington

On December 22, 2004, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Imaging and Medical Diagnostic Specialists, P.A., doing business as Central Imaging of Arlington (registrant-M00615) of Arlington. A total administrative penalty in the amount of \$13,000 was assessed the registrant for violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200407525

Cathy Campbell

Director, Legal Services

Department of State Health Services

Filed: December 30, 2004



#### Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Memorial Hermann Healthcare System, dba Hermann Breast Center

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Memorial Hermann Healthcare System, dba Hermann Breast Center (registrant - M00528-000) of Houston. A total penalty of \$8,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200500032

Cathy Campbell

Director, Legal Services

Department of State Health Services

Filed: January 5, 2005



#### Public Notice Statement to Revise the Existing Statewide Certificate of Death Document

The Department of State Health Services (DSHS)/Vital Statistics Unit (VS) announces its intent to revise the existing statewide Certificate of Death document. On February 5, 2004, the Department of Health and Human Services (DHHS) Secretary Tommy G. Thompson approved the 2003 revisions of the U.S. Standard Certificate of Live Birth, the

U.S. Standard Certificate of Death, and the U.S. Standard Report of Fetal Death.

The DSHS/VS sent a request for feedback via emails, mass mail out correspondences, and internal DSHS message system. The survey request was sent to individuals and organizations consisting of known past and current data-users, to all local health departments, the Texas Hospital Association, Texas Medical Association and the Dallas-Ft. Worth Hospital Council. Subject-matter experts from throughout the DSHS, i.e., Office of Minority Health, Children With Special Health Care Needs, Bureau of Food and Drug Safety, etc participated in this evaluation process. The survey comments were utilized as part of our decision-making process.

The workgroup recommendations for the Texas Death Certificate revision, effective January 1, 2006, are reflected in the attached spreadsheet. It should be noted that the spreadsheet includes additions, deletions and modifications made to the existing certificate of death. All other death certificate items will remain as currently being collected. To view a copy of the existing death certificate document (prior to the revisions), please visit the DSHS/VS website at: [www.tdh.state.tx.us/bvs](http://www.tdh.state.tx.us/bvs).

The recommendations include adopting two of the new items from the National Center for Health Statistics (NCHS) U.S. Standard Certificate, and deleting one of the items currently being collected on the Texas certificate that is not included on the national certificate model. The workgroup made every effort to avoid changing or eliminating any data item that was identified as critical to ongoing research or studies.

It is expected that a growing number of death certificates will be created electronically utilizing the new electronic birth registration system, i.e., Texas Electronic Registrar (TER). However, the need for a manual paper registration process still remains for those participants in the death registration process who will not be using the TER, and the workgroup recognized the need to consider space and formatting in its decision-making. Another consideration was the desire to streamline the certificate in an effort to improve, rather than dilute, the quality of the information gathered. The U.S. standard certificate added only two new items. Some of the current items are being collected in a different format.

The primary source for guidance and information used during the death certificate revision process was the Center for Disease Control/NCHS and its U.S. Standard Certificate. The NCHS panel put extensive time and effort into developing the national recommendations, and the workgroup recognizes the value of that effort. The workgroup utilized the extensive work performed by the NCHS panel, which included eleven state representatives and a number of nationally recognized medical and health experts. The panel consulted a wide range of subject-matter experts, including medical examiners and funeral directors.

To facilitate implementation of the 2006 death certificate revisions, source providers (funeral homes, medical examiners, physicians, justices of the peace) will be given as much advance notice as possible to facilitate any changes they will need to make in procedures, collection tools, etc. The death certificate handbook/resource manual will be revised to include instructions for new and modified items, and recommended methods of collection. Statewide implementation of the new certificate will be mandatory, effective January 1, 2006.

Persons who wish to provide comments on the 2006 revisions of the Certificate of Death should contact the Department of State Health Services, Vital Statistics by mail at 1100 West 49th Street, Austin, Texas 78756, or by phone at (512) 458-7366 or toll free at 1-888-963-7111 no later than February 4, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the DSHS/VS at (512) 458-7719. All comments should reference this posting.

| 2006 Revision - Changes to the Texas Certificate of Death |  |               |   |                           |   |  |  |                     |  |
|---|--|---------------|---|---------------------------|---|--|--|---------------------|--|
| Tr. Item #  | Description of Item in Texas Death Certificate | US Standard # | US Standard Change  | Date Accepted or Modified | New Entry                                     | Comments Received  | Information in Italics quoted from MCHS. Report of Panel to Evaluate the US Standard Certificate   | Reason for Decision |  |
| 1   | Name of Deceased First, Middle, Last, Maiden   | 1             | Decedent's Legal Name. Asks for AKA's, but does not specifically ask for Maiden Name (No Change)  | X                         | Name Prior to first Marriage. Any aliases     |  | Continue to collect maiden names as this is invaluable for performing birth/death matching which is vital for both antiraid and public health purposes |                     |  |
| 2   | SEX  | 2             |   | X                         |   |  | Compliance with standard   |                     |  |
| 3   | Date of Death                                  | 29            | Changed language to "Actual or Presumed Date of Death." Moved to Medical Portion of Certificate.  | X                         | Adopt US Standard                             | Would be helpful to have on the top line of the certificate  | Compliance with standard   |                     |  |
| 4   | Date of Birth                                  | 5             | (No Change)   | X                         |   |  | Compliance with standard   |                     |  |
| 5   | Age  | 4             | Age - Last Birthday   | X                         | Adopt US Standard                             |  | Compliance with standard   |                     |  |
| 6   | Birth Place                                    | 6             | (No Change)   | X                         |   |  | Compliance with standard   |                     |  |
| 7   | Social Security Number                         | 3             | (No Change)   | X                         |   |  | Compliance with standard   |                     |  |
| 8   | Race   | 53            | Changed to checkboxes listing races and instructions to check all that apply  | X                         | Adopt US Standard checkbox format.            | Makes it easier to efficiently code and enter the data because it is a finite list; Will better describe the racial diversity of the State; More than one checkbox checked will make it almost impossible to standardize any data collection | Compliance with standard   |                     |  |
| 9a  | Was the Decedent of Hispanic Origin            | 52            | Changed to checkboxes listing Hispanic origins with an "Other" option, and a "No" option  | X                         | Adopt US Standard checkbox format.            | Multiple checks to boxes need to be allowed  | Compliance with standard   |                     |  |
| 9b  | If Yes, Specify (Mexican, Cuban, etc.)         | 52            |   | X                         | New Checkboxes eliminate need for this field. |  | Compliance with standard   |                     |  |
| 10  | Was Decedent Ever in U.S. Armed Forces         | 8             | (No Change)   | X                         |   |  | Compliance with standard   |                     |  |
| 11  | Education                                      | 51            | Changed to checkboxes listing education levels: 8th grade or less; 9th-12th grade, no diploma; High school graduate or GED completed; Some college credit but no degree; Associate degree; Bachelor's degree; Master's degree, Doctorate or Professional degree | X                         | Adopt US Standard checkbox format.            | Recommend it not be changed to categories. Prefer old education question   | Compliance with standard   |                     |  |
| 12  | Marital Status                                 | 9             | Adds "...At Time of Death"  | X                         | Adopt US Standard                             | Want option for same-sex partner; would add "married - unknown."   | Compliance with standard   |                     |  |
| 13  | Surviving Spouse                               | 10            | (No Change)   | X                         |   |  | Compliance with standard   |                     |  |

| 1a - Item # | Description of Item in Texas Death Certificate | US Standard # | US Standard Change  | Adopt to Modify | New Entry         | Comments Received                    | Information in Italics quoted from NCHS. Report of Panel to Evaluate the US Standard Certificate | Reason for Decision |
|-------------|--|---------------|---|-----------------|-------------------|--------------------------------------|--|---------------------|
| 14a         | Decedent's Usual Occupation                    | 54            | (No Change)   | X               |                   |                                      | Compliance with standard   |                     |
| 14b         | Kind of Business or Industry                   | 55            | (No Change)   | X               |                   |                                      | Compliance with standard   |                     |
| 15a         | Residence Street Address                       | 7d            | (No Change)   | X               |                   |                                      | Compliance with standard   |                     |
| 15b         | City or Town                                   | 7c            | (No Change)   | X               |                   |                                      | Compliance with standard   |                     |
| 15c         | County   | 7b            | (No Change)   | X               |                   |                                      | Compliance with standard   |                     |
| 15d         | State  | 7a            | (No Change)   | X               |                   |                                      | Compliance with standard   |                     |
| 15e         | ZIP Code                                       | 7f            | (No Change)   | X               |                   |                                      | Compliance with standard   |                     |
| 15f         | Inside City Limits?                            | 7g            | (No Change)   | X               |                   |                                      | Compliance with standard   |                     |
| 16          | Father's Name                                  | 11            | (No Change)   | X               |                   |                                      | Compliance with standard   |                     |
| 17          | Mother's Maiden Name                           | 12            | Stated, "Mother's Name Prior to First Marriage"                                       | X               | Adopt US Standard |                                      | Compliance with standard   |                     |
| 18          | Place of Death                                 | 14            | Adults choose "Hospice Facility" Changes the choice, "Residence" to "Decedent's Home" | X               | Adopt US Standard | Adding "Hospice Facility" is fine    | Compliance with standard   |                     |
| 19          | County of Death                                | 17            | (No Change)   | X               |                   |                                      | Compliance with standard   |                     |
| 20          | City or Town                                   | 16            | adds "State and ZIP"  | X               | Adopt US Standard |                                      | Compliance with standard   |                     |
| 21          | Name of Hospital or Institution                | 15            | Facility Name   | X               | Adopt US Standard |                                      | Compliance with standard   |                     |
| 22          | Informant - Signature & Relationship           | 13a,b         | 13a - Informant's Name, 13b - Relationship to Decedent. No Signature.                 | X               | Adopt US Standard |                                      | Compliance with standard   |                     |
| 23          | Mailing Address of Informant                   | 13c           | (No Change)   | X               |                   |                                      | Compliance with standard   |                     |
| 24          | Method of Disposition                          | 16            | Adults choose of Entombment   | X               | Adopt US Standard | Don't see point to adding entombment | Compliance with standard   |                     |
| 25a         | Place of Disposition                           | 19            | (No Change)   | X               |                   |                                      | Compliance with standard   |                     |
| 25b         | Section, Block, Lot, Space                     |               | Does not appear on US Standard Certificate  |                 |                   | Required by statute. H&SC 163.0016   | Follow Statute   |                     |
| 26          | Location (City, State)                         | 20            | (No Change)   | X               |                   |                                      | Compliance with standard   |                     |
| 27          | Signature of Funeral Dir                       | 22            | (No Change)   | X               |                   |                                      | Compliance with standard   |                     |
| 28          | Date of Disposition                            | N/A           | Does not appear on US Standard Certificate  |                 |                   | Why is date of disposition removed?  | Compliance with standard   |                     |

| TS - Item # | Description of Item in Texas Death Certificate | US Standard # | US Standard Change  | Dead in | Accept/Modify | New Entry         | Comments Received  | Information in Italics quoted from NCHS Report of Panel to Evaluate the US Standard Certificate | Reason for Decision  |
|-------------|--|---------------|---|---------|---------------|-------------------|--|---|--|
| 29          | Name & Address of Funeral Home                 | 21            | (No Change)   |         |               |                   |  | Compliance with standard  |  |
| 30          | Certifier Type                                 | 45            | Choices change to certifying physician, pronouncing and certifying physician, and ME/JP   |         |               |                   |  | Compliance with standard  |  |
| 31          | Signature & Title of Certifier                 | 45, 47        | Two separate blocks   |         | X             | Adopt US Standard |  | Compliance with standard  |  |
| 32          | Date Signed                                    | 49            | (No Change)   |         | X             |                   |  | Compliance with standard  |  |
| 33          | Time of Death                                  | 30            | Changed to, "actual or presumed time of death."   |         | X             | Adopt US Standard |  | Compliance with standard  |  |
| 34          | Name & Address of Certifier                    | 46            | Added, "and ZIP code."  |         | X             | Adopt US Standard |  | Compliance with standard  |  |
| 35          | Part I & II Cause of Death Information         |               | Changes language in part I to, "Enter the chain of events-diseases, injuries, or complications that directly caused the death. Do not enter the terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing etiology. Do not abbreviate. enter only one cause per line. Add additional lines if necessary." |         | X             | Adopt US Standard | Like the phrase, "Chain of events". Add more lines for causes; Follow standard medical coding terminology (ICD 10)                       | Compliance with standard  |  |
| 36a         | Autopsy Performed?                             | 33            | (No Change)   |         | X             |                   |  | Compliance with standard  |  |
| 36b         | Autopsy Findings Available                     | 34            | (No Change)   |         | X             |                   |  | Compliance with standard  |  |
| 37          | Did Tobacco Contribute to Death                | 35            | (No Change)   |         | X             |                   |  | Compliance with standard  |  |
| 38          | Did Alcohol Contribute to Death                |               | Does not appear on US Standard Certificate  | X       |               |                   | Oppose removing the question, especially with accidental injuries; Think we should continue to collect; Why is alcohol checkbox removed? | Compliance with standard  | Neither the 1989 nor the 2003 revision of the U.S. Standard Certificate of Death had a question on alcohol as a contributing factor. The Panel to Evaluate the U.S. Standard Certificates and Report considered the addition of a question on alcohol but rejected it. The panel believed that certifiers do recognize that the medical complications of alcohol use contribute to cause death and report cirrhosis, alcoholic-hepatitis, etc. in Parts I and II of the medical certification. Unlike tobacco, which is almost never selected as an underlying cause, alcohol-related conditions do get selected as the underlying cause, so it's important to get the information in Parts I and II. You'd want the details on the medical manifestation and how these medical conditions fit into the sequence of conditions so that you would select an alcohol-related condition as the underlying cause when it is appropriate. |



| Tx. Item #  | Description of Item in Texas Death Certificate                     | US Standard # | US Standard Change  | Date Adopted or Modified | New Entry         | Comments Received   | Information in <i>italics</i> quoted from NCHS Report of Panel to Evaluate the US Standard Certificate | Reason for Decision |
|---|--|---------------|---|--------------------------|-------------------|---|--|---------------------|
| 38  | Was Decedent Pregnant  | 36            | Changed to, "If Female: (checkboxes) Not pregnant within past year. Pregnant at time of death, Not pregnant, but pregnant within 42 days of death. Not pregnant, but pregnant 43 days to one year before death. Unknown if pregnant within the past year. |                          | Adopt US Standard |   | Compliance with standard   |                     |
| 40  | Manner of Death  | 37            | (No Change)   | X                        |                   | The word accident should be removed, suggest "un-natural" in its place                              | Compliance with standard   |                     |
| 41a   | Date of Injury   | 38            | (No Change)   | X                        |                   |   | Compliance with standard   |                     |
| 41b   | Time of Injury   | 39            | (No Change)   | X                        |                   |   | Compliance with standard   |                     |
| 41c   | Injury at Work?  | 41            | (No Change)   | X                        |                   |   | Compliance with standard   |                     |
| 41d   | Place of Injury  | 40            | Changed examples to, "Decedent's home, construction site, restaurant, wooded area."   | X                        | Adopt US Standard |   | Compliance with standard   |                     |
| 41e   | Location of Injury   | 42            | (No Change)   | X                        | Adopt US Standard | Recommend collecting county, important for child fatality review teams to know the county of injury | Compliance with standard, add county to address elements requested                                     |                     |
| 41f   | Describe How Injury Occurred                                       | 43            | (No Change)   | X                        | Adopt US Standard |   | Compliance with standard   |                     |
| 42a   | Registrar File Number  | N/A           |   | X                        | Adopt US Standard |   | Compliance with standard   |                     |
| 42b   | Date Received by Local Registrar                                   | 50            | Date filed  | X                        | Adopt US Standard |   | Compliance with standard   |                     |
| 42c   | Signature of Local Registrar                                       | N/A           |   | X                        |                   |   | Compliance with standard   |                     |
| <b>ADDITIONAL UNNUMBERED FIELDS ON THE TEXAS DEATH CERTIFICATE</b>          |  |               |   |                          |                   |   |  |                     |
| <b>IF DECEASED SERVED IN THE U.S. ARMED FORCES, FILL OUT THE FOLLOWING:</b> |  |               |   |                          |                   |   |  |                     |
|   | Is the deceased to have been in such service?                      | N/A           | Does not appear on US Standard Certificate  | X                        | Keep as is        |   | Required by Statute  |                     |
|   | Name of organization in which service was rendered?                | N/A           | Does not appear on US Standard Certificate  | X                        | Keep as is        |   | Required by Statute  |                     |
|   | Serial number of discharge papers or adjusted service certificate? | N/A           | Does not appear on US Standard Certificate  | X                        | Keep as is        |   | Required by Statute  |                     |
|   | Name of next of kin or of next friend?                             | N/A           | Does not appear on US Standard Certificate  | X                        | Keep as is        |   | Required by Statute  |                     |
| <b>IF DECEASED WAS MARRIED, FILL OUT THE FOLLOWING:</b>                     |  |               |   |                          |                   |   |  |                     |

| Tx - Item #   | Description of Item in Texas Death Certificate | US Standard # | US Standard Change                         | Date Accepted to Modify | New Entry                   | Comments Received                                    | Reason for Decision<br>Information in italics quoted from NCHS, Report of Panel to Evaluate the US Standard Certificate  |
|---|--|---------------|--|-------------------------|-----------------------------|--|--|
|   | Name of husband or wife                        | N/A           | Does not appear on US Standard Certificate |                         |                             |  |  |
|   | Age in years                                   | N/A           | Does not appear on US Standard Certificate |                         |                             |  |  |
| <b>IF DECEASED IS AN UNIDENTIFIED PERSON, FILL OUT THE FOLLOWING:</b> |  |               |  |                         |                             |  |  |
|   | Color of hair?                                 | N/A           | Does not appear on US Standard Certificate | X                       |                             |  | Though statute requires this information be collected, it is not required on the death certificate, nor is it required to be submitted to TDH, but rather to DPS. Collecting this information on the death certificate is redundant and unnecessary. |
|   | Color of eyes?                                 | N/A           | Does not appear on US Standard Certificate | X                       |                             |  | Though statute requires this information be collected, it is not required on the death certificate, nor is it required to be submitted to TDH, but rather to DPS. Collecting this information on the death certificate is redundant and unnecessary. |
|   | Height?  | N/A           | Does not appear on US Standard Certificate | X                       |                             |  | Though statute requires this information be collected, it is not required on the death certificate, nor is it required to be submitted to TDH, but rather to DPS. Collecting this information on the death certificate is redundant and unnecessary. |
|   | Weight?  | N/A           | Does not appear on US Standard Certificate | X                       |                             |  | Though statute requires this information be collected, it is not required on the death certificate, nor is it required to be submitted to TDH, but rather to DPS. Collecting this information on the death certificate is redundant and unnecessary. |
|   | Deformities?                                   | N/A           | Does not appear on US Standard Certificate | X                       |                             |  | Though statute requires this information be collected, it is not required on the death certificate, nor is it required to be submitted to TDH, but rather to DPS. Collecting this information on the death certificate is redundant and unnecessary. |
|   | Tattoo Marks?                                  | N/A           | Does not appear on US Standard Certificate | X                       |                             |  | Though statute requires this information be collected, it is not required on the death certificate, nor is it required to be submitted to TDH, but rather to DPS. Collecting this information on the death certificate is redundant and unnecessary. |
|   | Other marks of identification?                 | N/A           | Does not appear on US Standard Certificate | X                       |                             |  | Though statute requires this information be collected, it is not required on the death certificate, nor is it required to be submitted to TDH, but rather to DPS. Collecting this information on the death certificate is redundant and unnecessary. |
| <b>NEW ITEMS NOT ON TX CERT</b>                                       |  |               |  |                         |                             |  |  |
| US Standard #   |  |               |  |                         |                             |  |  |
| 23  | License number of funeral director             |               |  | X                       | Adopt US Standard           | Funeral Director's license number should be required | Compliance with standard   |
| 24  | Date Pronounced Dead                           |               |  | X                       | Not include on new standard |  | Pronouncement information is not required by statute, and is not reported to NCHS. This information was not found to be of value if collected by workgroup or by stakeholders providing input  |
| 25  | Time Pronounced Dead                           |               |  | X                       | Not include on new standard |  | Pronouncement information is not required by statute, and is not reported to NCHS. This information was not found to be of value if collected by workgroup or by stakeholders providing input  |

| Tx. Item # | Description of Item in Texas Death Certificate | US Standard # | US Standard Change | Date Accepted to Body | New Entry                   | Comments Received | Reasons for Decision   |  |
|------------|--|---------------|--------------------|-----------------------|-----------------------------|-------------------|--|--|
|            |  |               |                    |                       |                             |                   | Information in Italics quoted from NCHS Report of Panel to Evaluate the US Standard Certificate  | Information in Italics quoted from NCHS Report of Panel to Evaluate the US Standard Certificate  |
| 26         | Signature of Person Pronouncing Death          |               |                    | X                     | Not include on new standard |                   | Pronouncement information is not required by statute, and is not reported to NCHS. This information was not found to be of value if collected by workgroup or by stakeholders providing input. | Pronouncement information is not required by statute, and is not reported to NCHS. This information was not found to be of value if collected by workgroup or by stakeholders providing input. |
| 27         | License number of Pronouncer                   |               |                    | X                     | Not include on new standard |                   | Pronouncement information is not required by statute, and is not reported to NCHS. This information was not found to be of value if collected by workgroup or by stakeholders providing input. | Pronouncement information is not required by statute, and is not reported to NCHS. This information was not found to be of value if collected by workgroup or by stakeholders providing input. |
| 28         | Date Signed by Pronouncer                      |               |                    | X                     | Not include on new standard |                   | Pronouncement information is not required by statute, and is not reported to NCHS. This information was not found to be of value if collected by workgroup or by stakeholders providing input. | Pronouncement information is not required by statute, and is not reported to NCHS. This information was not found to be of value if collected by workgroup or by stakeholders providing input. |
| 44         | If transportation injury, Specify.             |               |                    |                       | Adopt US Standard           |                   | Compliance with standard   | Compliance with standard   |

TRD-200407534  
Cathy Campbell  
Director, Legal Services  
Department of State Health Services  
Filed: December 31, 2004

## Texas Higher Education Coordinating Board

Request for Proposals (RFP) 2005-2006 Title II - Teacher Quality Grants Program, No Child Left Behind Act of 2002 (P.L. 107-110)

Approximately \$5.6 million will be available to support K-12 teachers and other staff in gaining access to professional development in mathematics and science during 2005-2006.

Funds will be competitively distributed in Texas under the Coordinating Board's Teacher Quality Grants Program. The Teacher Quality Grants Program was most recently reauthorized in Title II of the NO CHILD LEFT BEHIND Act of 2002. Proposals for funding must be submitted by February 6, 2005 to the Teacher Quality Grants Office of the Texas Higher Education Coordinating Board. Information and selected on-line application materials are available at [www.thecb.state.tx.us](http://www.thecb.state.tx.us) under the Teacher Quality Grants Program.

The Teacher Quality Grants Program is designed to support training and retraining of elementary and secondary teachers and other staff in mathematics and science. Approximately 70-75 grants of up to \$82,000 will be made to support collaborative projects between higher education institutions and high-needs local school districts in the areas of mathematics and science, to improve teaching and learning in the schools.

The Board will approve recommendations for 2005-2006 awards at its April 21, 2005 quarterly meeting. Projects are funded under this application for 17 months and must be completed by September 30, 2006.

All public and private colleges and universities and appropriate non-profit organizations of proven effectiveness in educating mathematics and science teachers are eligible to apply for grants under the Teacher Quality Grants Program.

For further information, contact the Teacher Quality Grants office at (512) 427-6318 or go to the Texas Teacher Quality web site at <http://www.thecb.state.tx.us/TeacherQuality/RFP/Default.htm>.

TRD-200500020  
Jan Greenberg  
General Counsel  
Texas Higher Education Coordinating Board  
Filed: January 4, 2005

## Houston-Galveston Area Council

### Request for Proposal

The Houston-Galveston Area Council (H-GAC) is requesting written proposals to perform a safety planning study involving analyzing crashes and related data for five corridors (involving 12 intersections) in the City of Sugar Land. This study is part of H-GAC's traffic safety program and is aimed at improving safety in Sugar Land.

A pre-proposal meeting is scheduled at **2 p.m. on Monday, January 31, 2005**, at H-GAC offices. Please R.S.V.P. to Ned Levine, [ned.levine@h-gac.com](mailto:ned.levine@h-gac.com), if you plan to attend the meeting. Submittals are due by **3 p.m. on Thursday, February 17, 2005**. Late submittals

will **NOT** be accepted. Ten (10) typewritten, bound/stapled and signed copies are required.

The Request for Proposals packet can be downloaded from the H-GAC Transportation Department Web site at [www.h-gac.com/transportation](http://www.h-gac.com/transportation). Interested firms may also obtain the packet at the H-GAC offices at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, or by contacting Ned Levine at 713-627-3200. All questions regarding the Request for Proposals must be made in writing, and can be sent to the attention of Ned Levine by email to [ned.levine@h-gac.com](mailto:ned.levine@h-gac.com), faxed to 713-993-4508, or mailed to the Houston-Galveston Area Council, P.O. Box 22777, Houston, TX 77227-2777. While questions regarding this request for proposals are welcome anytime, no scope of services questions will be answered before the pre-proposal meeting.

TRD-200500034  
Alan Clark  
MPO Director  
Houston-Galveston Area Council  
Filed: January 5, 2005

## Texas Department of Insurance

### Company Licensing

Application to change the name of CENTRIS INSURANCE COMPANY to HCC INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Indianapolis, Indiana.

Application to change the name of COMERICAL AMERICA INSURANCE COMPANY to COMMERCIAL ALLIANCE INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Houston, Texas.

Application for incorporation to the State of Texas by UNITED DENTAL CARE OF TEXAS, INC., under the assumed name ASSURANT DENTALCARE a domestic Health Maintenance Organization. The home office is in Dallas, Texas.

Application for incorporation to the State of Texas by UNITED DENTAL CARE OF TEXAS, INC., under the assumed name ASSURANT EMPLOYEE BENEFITS a domestic Health Maintenance Organization. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200500043  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: January 5, 2005

### Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2610 on Wednesday, January 26, 2005, at 9:30 a.m. in Room 100 of the William B. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the Texas Windstorm Insurance Association's (Association) filing of proposed additional increases to the limits of liability for certain Association policies of windstorm and hail insurance.

This notice is made pursuant to the Texas Insurance Code, Art. 21.49 §8D (g) which requires notification and a hearing prior to the Commissioner's approval, disapproval, or modification of the Association's proposed additional increases to the limits of liability for its policies of windstorm and hail insurance.

For additional information interested parties may contact Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or call at (512) 322-2265. To request copies of the TWIA petition contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-1204-23).

TRD-200500018

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: January 4, 2005

◆ ◆ ◆  
**Texas Lottery Commission**

Instant Game Number 456 "Casino Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 456 is "CASINO BINGO". The play style is "bingo".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 456 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 456.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, FREE, and CHIPS SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 456 - 1.2D

| PLAY SYMBOL | CAPTION |
|-------------|---------|
| B01         |         |
| B02         |         |
| B03         |         |
| B04         |         |
| B05         |         |
| B06         |         |
| B07         |         |
| B08         |         |
| B09         |         |
| B10         |         |
| B11         |         |
| B12         |         |
| B13         |         |
| B14         |         |
| B15         |         |
| I16         |         |
| I17         |         |
| I18         |         |
| I19         |         |
| I20         |         |
| I21         |         |
| I22         |         |
| I23         |         |
| I24         |         |
| I25         |         |
| I26         |         |
| I27         |         |
| I28         |         |
| I29         |         |
| I30         |         |
| N31         |         |
| N32         |         |
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| N34         |         |
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| N39         |         |
| N40         |         |
| N41         |         |
| N42         |         |
| N43         |         |
| N44         |         |
| N45         |         |
| G46         |         |

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| G48 |  |
| G49 |  |
| G50 |  |
| G51 |  |
| G52 |  |
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| G56 |  |
| G57 |  |
| G58 |  |
| G59 |  |
| G60 |  |
| O61 |  |
| O62 |  |
| O63 |  |
| O64 |  |
| O65 |  |
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| 70            |  |
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| 72            |  |
| 73            |  |
| 74            |  |
| 75            |  |
| FREE          |  |
| CHIPS SYMBOLS |  |

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

**Figure 2: GAME NO. 456 - 1.2E**

| CODE | PRIZE   |
|------|---------|
| FIV  | \$5.00  |
| TEN  | \$10.00 |
| FTN  | \$15.00 |
| TWN  | \$20.00 |

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$25.00, \$30.00, \$40.00, \$50.00, \$75.00, \$100, \$200 or \$500.

I. High-Tier Prize- A prize of \$1,000, \$2,000, \$5,000, \$20,000 or \$50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (456), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 456-0000001-001.

L. Pack - A pack of "CASINO BINGO" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. Every other book will reverse i.e., the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASINO BINGO" Instant Game No. 456 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASINO BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 40 (forty) play symbols. The player must scratch off the CALLER'S CARD area to reveal 40 (forty) Bingo Numbers. The player must mark all the BINGO NUMBERS on Cards 1 through 6 that match the Caller's Card. Each card has a corresponding prize legend. Players win by matching those same numbers on the six Player's Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the card, or an X pattern, they win a prize according to the legend of the respective playing card. Examples of play: If a player matches all bingo numbers plus the Free Space in a complete horizontal, vertical or diagonal line pattern in any one card the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers in all four (4) corners of any one card the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers plus Free Space to make a complete "X" pattern in any one card, the player wins prize according to the legend of the respective playing card. The chips play symbols in the six Bingo Cards can be used as a FREE space to complete a winning pattern. The Player can win up to six times on any ticket but only once on each card.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 40 (forty) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 40 (forty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 40 (forty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 40 (forty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a pack will not have identical patterns.

B. A ticket will win as indicated by the prize structure.

C. A ticket can win up to six times.

D. There will never be more than one win on a single Player's Card.

E. No duplicate numbers will appear on the Caller's Card.

F. No duplicate numbers will appear on each individual Player's Card.

G. The number range used for each letter will be as follows: B 01 -15; I: 16-30; N: 31-45; G: 46-60; O: 61-75.

H. Each Player's Card on the same ticket must be unique.

I. The majority of the tickets will have unique configurations.

J. There will be a CHIPS symbol on each Player's Card found in random locations except in any of the four (4) corners or the other four (4) locations that are involved with the "X" wins. On any one ticket the position of the CHIPS symbol should be different for each of the six (6) PLAYER'S CARDS.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "CASINO BINGO" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$30.00, \$40.00, \$50.00, \$75.00, \$100, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$25.00, \$30.00, \$40.00, \$50.00, \$75.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASINO BINGO" Instant Game prize of \$1,000, \$2,000, \$5,000, \$20,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASINO BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "CASINO

BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "CASINO BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 456. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 456 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$5          | 655,200                        | 7.69                        |
| \$10         | 336,000                        | 15.00                       |
| \$15         | 184,800                        | 27.27                       |
| \$20         | 100,800                        | 50.00                       |
| \$25         | 88,200                         | 57.14                       |
| \$30         | 18,900                         | 266.67                      |
| \$40         | 10,920                         | 461.54                      |
| \$50         | 12,600                         | 400.00                      |
| \$75         | 5,880                          | 857.14                      |
| \$100        | 4,200                          | 1,200.00                    |
| \$200        | 1,680                          | 3,000.00                    |
| \$500        | 588                            | 8,571.43                    |
| \$1,000      | 30                             | 168,000.00                  |
| \$2,000      | 10                             | 504,000.00                  |
| \$5,000      | 8                              | 630,000.00                  |
| \$20,000     | 4                              | 1,260,000.00                |
| \$50,000     | 4                              | 1,260,000.00                |

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.55 The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 456 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 456, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200500015

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: January 4, 2005



Instant Game Number 529 "Wheel of Fortune"

1.0 Name and Style of Game.

A. The name of Instant Game No. 529 is "WHEEL OF FORTUNE". The play style is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 529 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 529.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, WHEEL SYMBOL, \$1.00, \$2.00, \$3.00, \$5.00, \$8.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$200, \$1,000, \$2,500 and \$25,000.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 529 - 1.2D

| PLAY SYMBOL  | CAPTION  |
|--------------|----------|
| A            | AA       |
| B            | BB       |
| C            | CC       |
| D            | DD       |
| E            | EE       |
| F            | FF       |
| G            | GG       |
| H            | HH       |
| I            | II       |
| J            | JJ       |
| K            | KK       |
| L            | LL       |
| M            | MM       |
| N            | NN       |
| O            | OO       |
| P            | PP       |
| Q            | QQ       |
| R            | RR       |
| S            | SS       |
| T            | TT       |
| U            | UU       |
| V            | VV       |
| W            | WW       |
| X            | XX       |
| Y            | YY       |
| Z            | ZZ       |
| WHEEL SYMBOL | WIN      |
| \$1.00       | ONE\$    |
| \$2.00       | TWO\$    |
| \$3.00       | THREE\$  |
| \$5.00       | FIVE\$   |
| \$8.00       | EIGHT\$  |
| \$10.00      | TEN\$    |
| \$15.00      | FIFTN    |
| \$20.00      | TWENTY   |
| \$25.00      | TWY FIV  |
| \$50.00      | FIFTY    |
| \$100        | ONE HUND |
| \$200        | TWO HUND |
| \$1,000      | ONE THOU |
| \$2,500      | 25 HUND  |
| \$25,000     | 25 THOU  |

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

**Figure 2: GAME NO. 529 - 1.2E**

| <b>CODE</b> | <b>PRIZE</b>   |
|-------------|----------------|
| <b>TWO</b>  | <b>\$2.00</b>  |
| <b>THR</b>  | <b>\$3.00</b>  |
| <b>FIV</b>  | <b>\$5.00</b>  |
| <b>EGT</b>  | <b>\$8.00</b>  |
| <b>TEN</b>  | <b>\$10.00</b> |
| <b>FTN</b>  | <b>\$15.00</b> |
| <b>TWN</b>  | <b>\$20.00</b> |

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$3.00, \$5.00, \$8.00, \$10.00, \$15.00 or \$20.00. .

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$200.

I. High-Tier Prize- A prize of \$1,000, \$2,500 or \$25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (529), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 529-0000001-001.

L. Pack - A pack of "WHEEL OF FORTUNE" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 002 and 003 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in a A- B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WHEEL OF FORTUNE" Instant Game No. 529 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in

Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WHEEL OF FORTUNE" Instant Game is determined once the latex on the ticket is scratched off to expose 23 (twenty-three) Play Symbols. If a player matches any of YOUR LETTERS play symbols to any of the WHEEL LETTERS play symbols the player wins prize for that letter. If a player reveals a wheel symbol the player wins \$20 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 23 (twenty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 23 (twenty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical "spot for spot" play data.

B. No duplicate non-winning Your Letters play symbols on a ticket.

C. No duplicate Wheel Letters play symbols on a ticket.

D. No three (3) or more like non-winning prize symbols on a ticket.

E. The wheel symbol will never appear more than once on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. The wheel symbol will always appear with the \$20 prize symbol.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "WHEEL OF FORTUNE" Instant Game prize of \$2.00, \$3.00, \$5.00, \$8.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00,

\$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WHEEL OF FORTUNE" Instant Game prize of \$1,000, \$2,500 or \$25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WHEEL OF FORTUNE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "WHEEL OF FORTUNE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "WHEEL OF FORTUNE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 529. The approximate number and value of prizes in the game are as follows:

**Figure 3: GAME NO. 529 - 4.0**

| <b>Prize Amount</b> | <b>Approximate Number of Winners*</b> | <b>Approximate Odds are 1 in**</b> |
|---------------------|---------------------------------------|------------------------------------|
| <b>\$2.00</b>       | 1,008,000                             | 10.00                              |
| <b>\$3.00</b>       | 524,160                               | 19.23                              |
| <b>\$5.00</b>       | 322,560                               | 31.25                              |
| <b>\$8.00</b>       | 80,640                                | 125.00                             |
| <b>\$10.00</b>      | 80,640                                | 125.00                             |
| <b>\$15.00</b>      | 60,480                                | 166.67                             |
| <b>\$20.00</b>      | 40,320                                | 250.00                             |
| <b>\$50.00</b>      | 40,320                                | 250.00                             |
| <b>\$100</b>        | 6,216                                 | 1,621.62                           |
| <b>\$200</b>        | 2,520                                 | 4,000.00                           |
| <b>\$1,000</b>      | 71                                    | 141,971.83                         |
| <b>\$2,500</b>      | 40                                    | 252,000.00                         |
| <b>\$25,000</b>     | 14                                    | 720,000.00                         |

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.65. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 529 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 529, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200500016



Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: January 4, 2005



**Instant Game Number 536 "Giant Jumbo Bucks"**

**1.0 Name and Style of Game.**

A. The name of Instant Game No. 536 is "GIANT JUMBO BUCKS".  
The play style is "key number match with multiplier".

**1.1 Price of Instant Ticket.**

A. Tickets for Instant Game No. 536 shall be \$5.00 per ticket.

**1.2 Definitions in Instant Game No. 536.**

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, JUMBO SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$40.00, \$50.00, \$100, \$500, \$1,000 and \$50,000.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 536 - 1.2D

| PLAY SYMBOL  | CAPTION |
|--------------|---------|
| 1            | ONE     |
| 2            | TWO     |
| 3            | THR     |
| 4            | FOR     |
| 5            | FIV     |
| 6            | SIX     |
| 7            | SVN     |
| 8            | EGT     |
| 9            | NIN     |
| 10           | TEN     |
| 11           | ELV     |
| 12           | TLV     |
| 13           | TRN     |
| 14           | FFN     |
| 15           | FTN     |
| 16           | SXN     |
| 17           | SVT     |
| 18           | ETN     |
| 19           | NTN     |
| 20           | TWY     |
| 21           | TWON    |
| 22           | TWTO    |
| 23           | TWTH    |
| 24           | TWFR    |
| 25           | TWV     |
| 26           | TWSX    |
| 27           | TWSV    |
| 28           | TWET    |
| 29           | TWNI    |
| 30           | TRTY    |
| 31           | TRON    |
| 32           | TRTO    |
| 33           | TRTH    |
| 34           | TRFR    |
| 35           | TRV     |
| 36           | TRSX    |
| 37           | TRSV    |
| 38           | TRET    |
| 39           | TRNI    |
| JUMBO SYMBOL | WINX5   |
| \$1.00       | ONE\$   |
| \$2.00       | TWO\$   |
| \$4.00       | FOUR\$  |
| \$5.00       | FIVE\$  |
| \$10.00      | TEN\$   |
| \$15.00      | FIFTN   |

|          |          |
|----------|----------|
| \$20.00  | TWENTY   |
| \$25.00  | TWY FIV  |
| \$40.00  | FORTY    |
| \$50.00  | FIFTY    |
| \$100    | ONE HUND |
| \$500    | FIV HUND |
| \$1,000  | ONE THOU |
| \$50,000 | 50 THOU  |

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

**Figure 2: GAME NO. 536 - 1.2E**

| CODE | PRIZE   |
|------|---------|
| FIV  | \$5.00  |
| TEN  | \$10.00 |
| FTN  | \$15.00 |
| TWN  | \$20.00 |

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

I. High-Tier Prize- A prize of \$1,000, \$5,000 or \$50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (536), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 536-0000001-001.

L. Pack - A pack of "GIANT JUMBO BUCKS" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs alternate. One will show the front of ticket 001 and back of 075 while the other fold will show back of ticket 001 and front of 075. Please note the books will be in a A- B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements

of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GIANT JUMBO BUCKS" Instant Game No. 536 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "GIANT JUMBO BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the four SERIAL NUMBERS play symbols the player wins prize shown for that number. If a player reveals a JUMBO play symbol the player wins 5 times the prize shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No duplicate non-winning Your Numbers on a ticket.
- C. No duplicate Serial Numbers on a ticket.

D. No more than four like non-winning prize symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

G. The JUMBO symbol will only appear on intended winning tickets and only as designated by the prize structure.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "GIANT JUMBO BUCKS" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GIANT JUMBO BUCKS" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GIANT JUMBO BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "GIANT JUMBO BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "GIANT JUMBO BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel

as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 536. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 536 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$5          | 1,120,000                      | 5.36                        |
| \$10         | 400,000                        | 15.00                       |
| \$15         | 160,000                        | 37.50                       |
| \$20         | 120,000                        | 50.00                       |
| \$50         | 80,000                         | 75.00                       |
| \$100        | 9,850                          | 609.14                      |
| \$500        | 750                            | 8,000.00                    |
| \$1,000      | 150                            | 40,000.00                   |
| \$5,000      | 17                             | 352,941.18                  |
| \$50,000     | 8                              | 750,000.00                  |

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.17. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 536 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 536, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200500017  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: January 4, 2005

## North Central Texas Council of Governments

### Request for Proposals to Conduct a Strategic Plan for the Trinity Railway Express

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is seeking written proposals from consultants to facilitate the development of a Strategic Plan for the Trinity Railway Express (TRE). The project will be funded through the 2004-2005 Unified Planning Work Program (UPWP). Engineering services are not anticipated for this study. The consultant effort will focus on consensus building and facilitation of a strategic plan for the TRE that integrates and builds on outcomes of the Dallas Area Rapid Transit (DART) System Plan and the Fort Worth Transportation Authority (FWTA) Strategic Plan. The effort will also include consideration of the results of NCTCOG's Regional Rail Corridor Study.

#### Due Date

Proposals must be submitted no later than 5 p.m. Central Daylight Time on Friday, February 25, 2005, to Christie Zupancic, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon at (817) 695-9267.

#### Contract Award Procedures

The firm or individual selected to perform this study will be recommended by a Project Review Committee. The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendations and, if found acceptable, will issue a contract award.

#### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200500051

R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: January 5, 2005

## Panhandle Regional Planning Commission

### Solicitation for Leased Space

The Panhandle Regional Planning Commission (PRPC) is seeking proposals for a leased facility to house the Work2aT.com Business Services Division of the Texas Workforce Centers in Amarillo, Texas. The center will provide a variety of employment and training related services to employers. The property must be available for occupancy on March 1, 2005 or at a reasonably negotiated time following the contract award.

The office space is to be located in the downtown banking and professional/business district of Amarillo, Texas. The property will be used to house eight (8) staff members; must offer a suitable area for group meetings, open space to be configured as a reception area, a kitchen area that includes a working sink, counter space, space and outlets for a refrigerator and microwave, accessible restrooms for men and women, and ample free off-street parking spaces for scheduled events. This space must be able to be configured for both open area use with modular furniture and enclosed rooms as specified in the Request for Proposals.

Proposals must be received by 5:00 p.m. Tuesday, February 1, 2005. For additional information or a copy of the Request for Proposals, please contact Leslie Hardin, Workforce Development Facilities Coordinator at (806) 372-3381 or lhardin@prpc.cog.tx.us.

TRD-200500028  
Leslie Hardin  
Facilities Coordinator  
Panhandle Regional Planning Commission  
Filed: January 4, 2005

## Public Utility Commission of Texas

### Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas on December 29, 2004, for designation as an eligible telecommunications carrier (ETC) and eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.418 and §26.417, respectively.

Docket Title and Number: Application of Smartcom Telephone, LLC for Eligible Telecommunications Carrier (ETC) Designation and Eligible Telecommunications Provider (ETP). Docket Number 30607.

The Application: The company is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. Smartcom Telephone, LLC seeks ETC/ETP designation in the identified study areas and exchanges of SBC Texas and Verizon Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326,

Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 3, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30607.

TRD-200407529  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 30, 2004

◆ ◆ ◆  
**Notice of Application to Amend Certificated Service Area Boundaries**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on December 8, 2004, for an amendment to certificated service area boundaries.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P. d/b/a SBC Texas for a Minor Boundary Amendment to its Certificate of Convenience between Belton and Temple Exchanges. Docket Number 30518.

The Application: The proposed boundary amendment will transfer two small sections of serving area from the Belton exchange to the Temple exchange to accommodate two new subdivisions that are currently under construction. There are no customers in these areas currently.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than January 21, 2005, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 30518.

TRD-200500040  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 5, 2005

◆ ◆ ◆  
**Notice of Petition for Declaratory Order**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) a petition on December 27, 2004, for a declaratory order.

Docket Style and Number: Petition of the Cities of Beaumont, Conroe, and Port Arthur for Declaratory Order, Docket Number 30604.

The Application: The petition requests that the commission issue an order declaring that the Public Utility Regulatory Act §39.103 does not interfere with Cities' original jurisdiction to set rates and that the commission is without the original jurisdiction necessary to review the surcharge tariffs at issue.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 30604.

TRD-200500027  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 4, 2005

◆ ◆ ◆  
**Texas A&M University, Board of Regents**

**Request for Proposal**

Texas A&M University is seeking Proposals from an experienced Consulting Firm for assistance in the process to select software and implementation vendor(s) for the Enterprise Information System (EIS) Project. The President of Texas A&M University has affirmed the necessity of an experienced Consulting Firm for assistance in the vendor selection process and contract negotiations for the EIS project. Texas A&M University intends to award to a consulting firm that has previous experience on this project.

All documents pertaining to this Request for Proposal are available on the Electronic State Business Daily (<http://esbd.tbpc.state.tx.us>) under agency requisition number "RFP MAIN 05-0018."

Information may also be obtained by contacting:

Mary Sue Goldwater  
Associate Director of Purchasing Services  
Texas A&M University  
P.O. Box 30013  
College Station, Texas 77842-0013  
[ms-goldwater@tamu.edu](mailto:ms-goldwater@tamu.edu)

Selection criteria is based on best value which shall include price, services, company experience, demonstrated competence and qualifications, references past experience, and the ability to meet established schedule. Proposals must be received on or before 2:00 p.m. on Monday, February 14, 2005.

TRD-200500048  
Vickie Burt Spillers  
Executive Secretary to the Board  
Texas A&M University, Board of Regents  
Filed: January 5, 2005

◆ ◆ ◆  
**Texas Department of Transportation**

**Request for Proposal for Aviation Engineering Services - Hemphill County Airport**

The County of Hemphill, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division will solicit and receive proposals for professional aviation engineering design services described in this notice.

Airport Sponsor: Hemphill County, Hemphill County Airport. TxDOT CSJ No.: 0504CANAD. Scope: Provide engineering/design services for relocation of wind sock; expansion of apron; relocation of 100LL fueling station and addition of Jet A fuel; and replacement of barbed wire fencing with deer proof fencing at the Hemphill County Airport.

The DBE goal is set at 5%. TxDOT Project Manager is Russell Deason.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online by selecting "Hemphill County Airport" at:

[www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm)

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

<http://www.dot.state.tx.us/avn/avn550.doc>

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.** (Attention: To ensure utilization of the latest version of Form 550, firms are encouraged to download Form 550 from the TxDOT website. Utilization of Form 550 from a previous download may not be the exact same format. Form 550 is an MS Word Template).

Eight completed, unfolded copies of Form AVN 550 must be postmarked by U. S. Mail by midnight February 7, 2005. (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on February 8, 2005; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. February 8, 2005 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members.

The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at:

[www.dot.state.tx.us/business/avnconsultinfo.htm](http://www.dot.state.tx.us/business/avnconsultinfo.htm)

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Russell Deason, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200407526

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: December 30, 2004



Request for Proposal for Aviation Engineering Services--Livingston Municipal Airport

The City of Livingston, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division will solicit and receive proposals for professional aviation engineering design services described in this notice.

Airport Sponsor: City of Livingston, Livingston Municipal Airport, TxDOT CSJ No. 0511LIVIN. Scope: To provide engineering/design services to rehabilitate and mark runway 12-30, rehabilitate cross taxiway, reconstruct apron, relocate and replace rotating beacon and tower, install PAPI-2 at Runway 30.

The HUB goal is set at 10%. TxDOT Project Manager is John Wepryk, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online by selecting "Livingston Municipal Airport" at:

[www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm)

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

<http://www.dot.state.tx.us/avn/avn550.doc>

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

(Attention: To ensure utilization of the latest version of Form 550, firms are encouraged to download Form 550 from the TxDOT website. Utilization of Form 550 from a previous download may not be the exact same format. Form 550 is an MS Word Template.)

Four completed, unfolded copies of Form AVN 550 must be postmarked by U. S. Mail by midnight February 7, 2005 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on February 8, 2005; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. February 8, 2005 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members.

The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at:

[www.dot.state.tx.us/business/avnconsultinfo.htm](http://www.dot.state.tx.us/business/avnconsultinfo.htm)

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee



deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or John Wepryk, P.E. for technical questions at 1-800-68-PILOT (74568).

TRD-200407527

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: December 30, 2004



### Request for Proposals--Highway Safety Plan

In accordance with 43 TAC §25.901, et seq., the Texas Department of Transportation (TxDOT) is requesting project proposals for the following statewide projects:

1. Technical Assistance and Data Analysis for Traffic Safety
2. Mobile Video Instructor Training Course for Law Enforcement
3. Traffic Safety Project Management Training
4. Safe Communities Statewide Process Manager
5. Observational Surveys of Restraint Use and Motorcycle Helmet Use
6. Police Traffic Services Support (Law Enforcement Coordinators)
7. Statewide Child Passenger Safety Education and Distribution Program
8. City/County Traffic Safety Assistance

The problem identification, solutions, objectives, performance measures and targets can be found at:

[www.dot.state.tx.us/trafficsafety/grants/webfrpmenu.htm](http://www.dot.state.tx.us/trafficsafety/grants/webfrpmenu.htm).

Responses to this Request for Proposals must submit the completed TxDOT Form 1851 and required attachments no later than February 16, 2005. Attachments must include a detailed budget using TxDOT Form 2077 and detailed Action Plans using TxDOT Form 1852. Proposals offering less activity or deliverables than in the online 1851 will not be considered. All proposals must include a minimum of 10% local cost share for each of the three years of an approved project. Eligible organizations are state agencies, local governments, educational institutions, and non-profit organizations. Eligible, non-governmental organizations are subject to a pre-award audit prior to any grant execution.

Organizations interested in submitting a proposal other than one of the eight projects above should follow the proposal instructions at:

[www.dot.state.tx.us/trafficsafety/grants/webfrpmenu.htm](http://www.dot.state.tx.us/trafficsafety/grants/webfrpmenu.htm).

**Project Proposals:** Organizations are responsible for insuring they use the appropriate proposal forms. All proposals must be submitted on TxDOT Form 1851 with appropriate attachments, with the problem identification, solution, objectives, performance measures, and targets as listed on the Traffic Safety Webpage. Proposals on obsolete or incorrect forms will not be scored and will thus be excluded from the FY06 HSP. Current project proposal application forms and instructions, scoring criteria, and other related documents are available at the TxDOT internet site:

[www.dot.state.tx.us/trafficsafety/grants/webfrpmenu.htm](http://www.dot.state.tx.us/trafficsafety/grants/webfrpmenu.htm)

or upon request by contacting the Traffic Operations Division, Traffic Safety Section, attention Mr. Bill Strawn at (512) 416-2613. State Program Manager contact information may be found at:

[www.dot.state.tx.us/trafficsafety/contact/contact.htm](http://www.dot.state.tx.us/trafficsafety/contact/contact.htm).

Proposals must be sent directly to Terry Pence, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. Proposals must be received by TxDOT no later than 5 p.m., February 16, 2005.

**Project Selection Process:** The selection of individual projects is based on the cost of the proposal, the qualifications of the key staff members, the organization, and the demonstrated ability and experience of the organization as shown in the proposal. Traffic safety managers will review and evaluate each proposal against a number of selected criteria, including a time-framed action plan; cost and cost eligibility; percent of matching funding proposed; a reasonable and necessary budget; and ability to meet the problem solution. Separate documents with information pertaining to the submitting agency's qualifications, commitment, availability of external resources, task force associations, or previous traffic safety or related experience may also be included with the proposal. Failure to follow the above requirements may disqualify your proposal from the scoring process. Any questions regarding your proposal should be directed via email to Mr. Bill Strawn at

[wstrawn@dot.state.tx.us](mailto:wstrawn@dot.state.tx.us).

Selected proposals will be recommended for inclusion in the Texas HSP expected to begin in federal fiscal year 2006 (October 1, 2005). Proposals selected for inclusion in the FY 2006 HSP become cost reimbursable grant-in-aid agreements. All information resource-related activities will be subject to TxDOT information resource procurement procedures. Federal and state grant funds cannot be used for lobbying.

**HSP Review and Approval:** The HSP will be submitted to the Texas Transportation Commission for approval. Upon approval, the HSP is submitted to the Governor's Office and forwarded to the federal government for review and comment.

**HSP Implementation:** The HSP becomes operational on October 1 of every year if federal appropriations allow. Funds are to be used to support state problem identification, planning and implementation of a traffic safety program to reduce crashes, deaths, and injuries on Texas roadways. The traffic safety program is designed to implement worthwhile projects where costs will be assumed by the sponsoring agency. Proposals must be for three years duration for these eight projects. Funding may be awarded for one to three grant years, based on available federal grant funds. "Supplanting" of local or state funds with federal funds to support personnel or an activity that is already active is prohibited.

**HSP Program Areas and Goals:** Submitted proposals must comply with the goals and strategies outlined in the draft FY06 performance measures chart at:

[www.dot.state.tx.us/trafficsafety/grants/webfrpmenu.htm](http://www.dot.state.tx.us/trafficsafety/grants/webfrpmenu.htm).

The chart is also available from the responsible Traffic Safety Program Manager in the Traffic Operations Division.

**Authority and Responsibility:** The traffic safety grant program derives from the National Highway Safety Act of 1966 (23 USC §401, et seq.), and the Texas Traffic Safety Act of 1967 (Transportation Code, Chapter 723). An integral part of the Texas Department of Transportation and working through the department's 25 districts for local projects, the program is administered at the state level by the department's Traffic Operations Division. The executive director of TxDOT is the designated Governor's Highway Safety Representative.

TRD-200500008  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: January 3, 2005

## Texas Veterans Land Board

Competitive Sealed Proposal (RFP) Notice--Texas State Veterans Nursing Home--Amarillo

Proposals for this project will be received until **3:00 P.M., February 8, 2005, at the Texas General Land Office, 1700 North Congress Ave., Stephen F. Austin Bldg., B-30 Austin, Texas 78701.** See the RFP for other delivery choices.

Plans and specifications may be obtained from Graeber Simmons & Cowan, 400 Bowie Street, Austin, Texas 78703. Contact: Ed Richburg Voice: 512.477.9417, Fax: 512.477.9675, for a deposit of \$250.00, refundable upon return of a complete, unmarked set(s).

A mandatory (must attend and sign in) Pre-Proposal Conference will be held at the Texas General Land Office, Stephen F. Austin Bldg., Large Conference Room - 9th floor, 1700 N Congress Ave., Austin, Texas 78701, at 1:30 P.M., January 20, 2005. The VLB will reject Proposals submitted by firms that did not attend the mandatory Pre-Proposal Conference.

Only Proposal submitted in accordance with RFP will be accepted. The RFP may be obtained after January 5, 2005, by faxing a request to Debby French @ 512.463.1795 or e-mailing debby.french@glo.state.tx.us or through the Electronic State Business Daily at:

<http://esbd.thpc.state.tx.us/1380/sagency.cfm>

**NOTE: Please Search under Agency Code 305 (Texas General Land Office)**

No oral explanation in regard to the meaning of the drawings and specifications will be made and no oral instructions will be given before the award of the Contract. Discrepancies, omissions or doubts as to the meaning of drawings and specifications and all communications concerning the project shall be communicated in writing to Debby French (Fax) 512.463.1795 or e-mail debby.french@glo.state.tx.us for interpretation. Respondents should act promptly and allow sufficient time for a reply to reach them before the submission of their Proposals. Any interpretation made will be in the form of an addendum to the specifications, which will be forwarded to all known Respondents and its receipt by the Respondents shall be acknowledged on the face of the Addendum and returned with the Proposal. Additionally, Respondents shall acknowledge receipt of all addenda on the Contractor's Proposal Form in the spaces provided.

TRD-200500053  
Larry L. Laine  
Chief Clerk, Deputy Land Commissioner  
Texas Veterans Land Board  
Filed: January 5, 2005

## Texas Water Development Board

### Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Brown County Water Improvement District No. 1, 501 East Baker, Brownwood, Texas, 76801-7209, received December 6, 2004, application for financial assistance in the amount of \$24,405,000 from the Drinking Water State Revolving Fund.

Inverness Forest Improvement District, c/o The GMS Group, L.L.C., 5075 Westheimer, Suite 1175, Houston, Texas, 77056-5606, received December 27, 2004, application for financial assistance in the amount of \$3,330,000 from the Texas Water Development Funds.

City of Palestine, 504 North Queen Street, Palestine, Texas, 75801, received December 1, 2004, application for financial assistance in the amount of \$4,665,000 from the Clean Water State Revolving Fund.

San Antonio Water System, on behalf of the City of San Antonio, 1001 East Market Street, San Antonio, Texas, 78298-2449, received December 2, 2004, application for financial assistance in the amount of \$56,000,000 from the Clean Water State Revolving Fund.

TRD-200500044  
Suzanne Schwartz  
General Counsel  
Texas Water Development Board  
Filed: January 5, 2005

## Texas Workers' Compensation Commission

### Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the *Procedures and Standards for the Medical Advisory Committee*. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee representative vacancies:

#### Primary

- \* Public Health Care Facility

#### Alternate

- \* Public Health Care Facility

- \* Dentist

- \* Pharmacist

- \* Podiatrist

- \* Employer

- \* Employee

- \* General Public Representative 1

- \* General Public Representative 2

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the *Procedures and Standards for the Medical Advisory Committee* as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings. Voluntary service on the Medical Advisory Committee is greatly appreciated by the TWCC Commissioners and the TWCC Staff.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at <http://www.twcc.state.tx.us>. Click on 'Commission Meetings', then 'Medical Advisory Committee'. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at (512) 804-4855 or Ruth Richardson, Manager of Monitoring, Analysis and Education, Medical Review Division at (512) 804-4850.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

**LEGAL AUTHORITY** The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

**PURPOSE AND ROLE** The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

**COMPOSITION** Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health

care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

**Terms of Appointment:** Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

**RESPONSIBILITY OF MAC MEMBERS** Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The TWCC Commissioners designate the chairman of the MAC. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives

a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman: Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division; prior to meetings, confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

- a. Preparation of a suitable agenda.
- b. Planning MAC activities.
- c. Establishing meeting dates and calling meetings.
- d. Establishing subcommittees.
- e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

**COMMITTEE SUPPORT STAFF** The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

**SUBCOMMITTEES** The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

**WORK GROUPS** When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

**WORK PRODUCT** No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

**MEETINGS Frequency of Meetings.** Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

**CONDUCT AS A MAC MEMBER** Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

**Comportment Requirements for MAC Members:**

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200500030

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: January 5, 2005

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### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the TAC, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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